

No. 15029

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United States  
Court of Appeals  
For the Ninth Circuit

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ALLEEN S. MILDREN, and DONALD LEE  
MILDREN,

Appellants,

vs.

JESSIE MILDREN,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

FILED

APR 30 1956

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States District Court, Southern District  
of California, Central Division

Civil Action No. 17253-WB

THE MUTUAL LIFE INSURANCE COMPANY  
OF NEW YORK, a Corporation,

Plaintiff,

vs.

ALLEEN S. MILDREN, DONALD L. MIL-  
DREN, PAUL MILDREN, JR., JESSIE  
MILDREN, DOE ONE, DOE TWO and DOE  
THREE,

Defendants.

### COMPLAINT

(Declaratory Relief and Interpleader)

Plaintiff complains of defendants above named  
and for cause of action alleges as follows:

#### I.

That jurisdiction of this Court exists under the  
provisions of Title 28, United States Code, Section  
1332. That plaintiff is a citizen and resident of the  
State of New York; that each of the defendants is a  
citizen of one of the States of the United States  
other than the State of New York; that the amount  
in controversy exclusive of interest and costs exceeds  
the sum of \$3,000.00. [2\*]

#### II.

That at all times mentioned herein plaintiff has  
been and now is a corporation organized and exist-

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\*Page numbering appearing at foot of page of original Certified  
Transcript of Record.

ing under and by virtue of the laws of the State of New York with its principal place of business in said State, and authorized to engage in and engaging in the business of issuing policies of life insurance and kindred sums of insurance, both in the State of New York and in the State of California.

### III.

That defendant Alleen S. Mildren was formerly the wife of Paul Mildren, the insured named and designated in the five policies of insurance hereinafter mentioned, and is a citizen and resident of the State of California.

That defendants Donald L. Mildren and Paul Mildren, Jr., are the sons of said insured, Paul Mildren, and the aforesaid defendant Alleen S. Mildren and are each citizens and residents of the State of California; that plaintiff is informed and believes and therefore alleges that said defendants Donald L. Mildren and Paul Mildren, Jr., are each over sixteen years of age and that each of said defendants has now attained his majority and is twenty-one years of age or more.

That defendants Doe One, Doe Two and Doe Three are fictitiously named defendants, the identity of each of whom is now unknown to plaintiff and each of whom is a citizen and resident of one of the States of the United States, other than the State of New York and each of whom claims to have an interest in or to the proceeds of one or more of the five hereinafter mentioned policies of insurance is-

sued by plaintiff to Paul Mildren as the insured. That when the true name, residence and citizenship of any one or more of said fictitiously named defendants has been discovered by plaintiff, plaintiff will ask leave of Court to amend this complaint to set forth the same. [3]

IV.

That Paul Mildren, the insured under each of the five hereinafter mentioned policies of insurance, and sometimes hereinafter referred to as the "insured," died on or about July 21, 1954, in the City of Los Angeles, County of Los Angeles, State of California. That on the dates hereinafter in this paragraph IV set forth plaintiff issued to the said Paul Mildren as the insured plaintiff's policies of insurance numbered and described as follows, to wit:

| Policy No. | Policy Type       | Date          | Original    |
|------------|-------------------|---------------|-------------|
|            |                   |               | Face Amount |
| 3,373,875  | Ordinary Life     | 10/22/24..... | \$ 2,500.00 |
| 3,377,665  | Ordinary Life     | 10/30/24..... | 2,500.00    |
| 3,708,187  | Ordinary Life     | 10/11/26..... | 3,000.00    |
| 5,448,542  | Endowment Annuity | 12/28/38..... | 10,000.00   |
| 5,586,988  | Endowment Annuity | 2/19/40.....  | 3,125.00    |

That by rider dated 2/8/43 described in Endowment Annuity Policy Number 5,448,542 said policy was converted into a reduced paid up Annuity Endowment policy in the face amount of \$2,476.00.

That by reason of dividend accruals the face amount of policies numbered 3,373,875, 3,377,665, 3,708,187 and 5,886,988 has each been increased as follows:



| Policy No.      | Increased<br>Face Amount |
|-----------------|--------------------------|
| 3,373,875 ..... | \$ 2,505.78              |
| 3,377,665 ..... | 2,505.78                 |
| 3,708,187 ..... | 3,008.62                 |
| 5,886,988 ..... | 3,138.56                 |

That in and by the terms of said policies and each of them it was agreed that there would be paid to the designated beneficiary named in each of said policies, upon receipt by plaintiff of due proof of the death of the insured (and, in the case of Endowment Annuity policies numbered 5,448,542 and 5,586,988, upon receipt of due proof in respect to each of said two policies that such [4] death occurred prior to the due date of the first Life Income Payment proceeds to be paid under each of said policies on December 28, 1960, and February 19, 1961, respectively), the face amounts payable under each of said policies, said respective face amounts to be payable in the manner and amounts and upon the terms, provisions and contingencies provided in said respective policies or in Modes of Settlement attached to said policies respectively and forming a part thereof.

#### V.

That the beneficiary originally named in said policy No. 3,373,875 was William Mildren, referred to therein as the father of said insured. That on or about January 10, 1935, said designation of beneficiary was cancelled and said insured directed and provided in effect by Mode of Settlement attached to and forming a part of said policy that, in the event defendant Donald L. Mildren survived said in-



sured and was over sixteen years of age at the date of death of said insured, the proceeds of said policy of insurance should be paid in monthly installments of \$50.00 each, so long as said proceeds should suffice, first to said defendant Donald L. Mildren during his lifetime, then to defendant Paul Mildren, Jr., during his lifetime, then to defendant Alleen S. Mildren during her lifetime, then to the executors or administrators of the last survivor.

## VI.

That the beneficiary originally named in said Ordinary Life policy of insurance No. 3,377,665 was Jessie Wood, referred to therein as the mother of said insured; that plaintiff is informed and believes and therefore alleges that said Jessie Wood is one and the same person as Jessie Mildren, one of the named defendants herein. That on or about October 16, 1939, said designation of beneficiary was cancelled and said insured directed and provided in effect by Mode of Settlement attached to and forming a part of said policy [5] of insurance that, in the event defendant Paul Mildren, Jr., survived said insured and was over sixteen years of age at the date of death of said insured, the proceeds of said policy of insurance should be paid in equal monthly installments for a period of four years certain, first to said defendant Paul Mildren, Jr., during his lifetime, then to defendant Donald L. Mildren during his lifetime, and that following the death of defendant Donald L. Mildren during said four-year period the surrender value of any re-

maining unpaid installments should be paid to defendant Alleen S. Mildren, if living, otherwise to the executors or administrators of defendant Donald L. Mildren.

#### VII.

That the beneficiary originally named in said Ordinary Life policy of insurance No. 3,708,187 was defendant Alleen S. Mildren, referred to therein as the wife of said insured. That on or about January 10, 1935, said designation of beneficiary was cancelled and said insured directed and provided in effect by Mode of Settlement attached to and forming a part of said policy of insurance that in the event defendant Alleen S. Mildren survived said insured, the proceeds of said policy of insurance should be paid to said defendant Alleen S. Mildren in equal monthly installments for twenty years certain and continuing during her lifetime, and that in the event said defendant Alleen S. Mildren should die prior to the payment of all payments certain, any remaining payments certain should be paid as and when due to such of the insured's children as should then be living, equally, and that at the death of the last survivor of said children, the commuted value of any remaining payments certain should be paid to the executors or administrators of such last survivor.

#### VIII.

That the beneficiary originally named in said Endowment Annuity policy of insurance No. 5,448,542 was defendant Alleen S. [6] Mildren, if living, otherwise defendants Donald L. Mildren and Paul

Mildren, Jr., share and share alike, or the survivor of them. That on or about February 21, 1939, said designation of beneficiary was cancelled and said insured directed and provided in effect by Mode of Settlement attached to and forming a part of said policy of insurance that in the event defendant Alleen S. Mildren survived said insured, the proceeds of said policy of insurance should be paid to said defendant Alleen S. Mildren in monthly installments of \$50.00 each so long as said proceeds should suffice, during her lifetime, and after her death should be paid to said insured's children, defendants Donald L. Mildren and Paul Mildren, Jr., or to the survivor of them, all upon the contingencies and in the manner more specifically set forth in said Mode of Settlement.

#### IX.

That the beneficiary originally named in said Endowment Annuity policy of insurance No. 5,586,988 was defendant Alleen S. Mildren, if living, otherwise defendants Donald L. Mildren and Paul Mildren, Jr., equally, share and share alike, or the survivor of them.

#### X.

That on or about April 8, 1953, in that certain divorce action in the Superior Court of the State of California, in and for the County of San Bernardino, entitled "Alleen S. Mildren, Plaintiff and Cross-Defendant, vs. Paul Mildren, Defendant and Cross-Complainant," and numbered 68261 in the files and records of said Court, an interlocutory decree

of divorce was made and entered adjudging and decreeing that defendant Alleen S. Mildren was entitled to a divorce from said insured Paul Mildren. That said interlocutory decree provided in relevant part as follows:

“4. That the defendant and cross-complainant be and he is hereby awarded as his sole and separate property the following: [7]

\* \* \*

“(b) Life insurance policies.

\* \* \*

“5. That each of the parties be and they are hereby ordered to deliver to the other any of the real or personal property in the possession of the person or party other than the one to whom the same is herein awarded.”

That the final decree of divorce in said divorce action was made and entered on or about April 12, 1954; that said final decree continued in effect the provisions of said interlocutory decree with respect to the division of property between the parties to said divorce action, to wit, defendant Alleen S. Mildren and said insured, and specifically the portions of said interlocutory decree quoted hereinabove in this paragraph X.

## XI.

That on or about June 17, 1953, said insured executed and there was thereafter furnished to plaintiff a further and additional request for change of beneficiary under said five policies of insurance and

each of them, and therein, in said request for change of beneficiary, said insured designated as his intended beneficiary under each of said policies of insurance defendant Jessie Mildren, described in said request for change of beneficiary as the mother of said insured.

## XII.

That each of said policies of insurance contained a rider or other provision providing in effect, among other things, that the right to change the beneficiary thereunder was reserved solely to the insured, to the exclusion of the beneficiary, and that any change of beneficiary thereunder should be effective only upon endorsement of the same on such policy of insurance by plaintiff. That the aforesaid changes of beneficiary referred to hereinabove in paragraphs V through IX, inclusive, are each properly endorsed on [8] the respective policies of insurance in said paragraphs V through IX described, but that the attempted or purported change of beneficiary referred to in paragraph XI hereinabove has never been endorsed on any of said policies of insurance by reason of said insured's failure to submit said policies to plaintiff whether at the time of requesting said change of beneficiary, or otherwise, for the purpose of permitting plaintiff to endorse said change of beneficiary thereon; that plaintiff is informed and believes and therefore alleges that said insured's failure to submit said policies of insurance for endorsement of said last mentioned change of beneficiary was due to the fact that said policies of insurance were not at the time of such



requested change in the possession or under the control of said insured, but were in the possession or under the control of defendant Alleen S. Mildren and were withheld from said insured by said defendant Alleen S. Mildren.

### XIII.

That it is uncertain and unknown to plaintiff herein whether the aforesaid interlocutory and final decrees of divorce were valid and effective to constitute said insured the sole owner of said five policies of insurance as his separate property; that it is uncertain and unknown to plaintiff herein whether the aforesaid attempted or purported change of beneficiary referred to in paragraph XI hereinabove was valid and effective to change the beneficiary under each of said policies of insurance in the absence of endorsement of such change by plaintiff on each of said policies of insurance.

That defendant Jessie Mildren claims that said interlocutory and final decrees of divorce and said attempted or purported change of beneficiary referred to in paragraph XI hereinabove were each valid and effective, and that accordingly said defendant Jessie Mildren is the sole beneficiary under said five policies of insurance and each of them and is entitled to receive [9] payment of the entire proceeds thereof; that said defendant Jessie Mildren has demanded payment to her by plaintiff of the entire proceeds payable under each of said policies of insurance.

That defendant Alleen S. Mildren claims that the aforesaid attempted or purported change of beneficiary referred to in paragraph XI hereinabove was invalid and ineffective by reason of the fact that said insured was incompetent at the time of execution of said purported or attempted request for change of beneficiary, and by reason of the fact that said change was never endorsed on any of said five policies of insurance, and accordingly said defendant Alleen S. Mildren claims that she now is and remains the primary beneficiary under policies of insurance Nos. 3,708,187, 5,448,542 and 5,586,988 and is entitled to receive payment of the proceeds thereof for the time and in the amounts and manner provided and specified in each of said three policies of insurance or in Modes of Settlement attached thereto and forming a part thereof.

That defendants Donald L. Mildren and Paul Mildren, Jr., claim or may claim as contingent beneficiaries under policies of insurance Nos. 3,708,187 and 5,448,542 to be entitled to payment of the remaining proceeds thereof at the times and in the manner and amounts specified in said two policies of insurance or in Modes of Settlement attached thereto and forming a part thereof in the event of the death of defendant Alleen S. Mildren prior to payment in full of the proceeds of said policies.

That for the same reasons as are set forth in this paragraph XII above as being asserted by defendant Alleen S. Mildren for the alleged invalidity thereof, defendant Donald L. Mildren further claims

that the aforesaid attempted or purported change of beneficiary referred to in paragraph XI hereinabove was invalid and ineffective and that he is and remains the primary beneficiary under said policy of insurance No. 3,373,875 and is entitled to receive payment of the proceeds thereof at the times and in the [10] amounts and manner provided and specified in said policy of insurance or in Mode of Settlement attached thereto and forming a part thereof.

That defendant is informed and believes and therefore alleges that Paul Mildren, Jr., claims that the aforesaid attempted or purported change of beneficiary referred to in paragraph XI hereinabove was invalid and ineffective and that he is and remains the primary beneficiary under said policy of insurance No. 3,377,665 and is entitled to receive payment of the proceeds thereof at the times and in the amounts and manner provided and specified in said policy of insurance or in Mode of Settlement attached thereto and forming a part thereof.

That by reason of the alleged invalidity of said request for change of beneficiary mentioned in paragraph XI above, defendant Alleen S. Mildren further claims, as contingent beneficiary under said policies of insurance Nos. 3,373,875 and 3,377,665, to be entitled to payment of the proceeds thereof at the times and in the manner and amounts provided and specified in said policies of insurance, or in Modes of Settlement attached thereto and forming a part thereof, in the event of the death of defend-



ant Donald L. Mildren prior to payment in full of the proceeds of said policy No. 3,373,875 or in the event of the death of defendant Paul Mildren, Jr., prior to payment in full of the proceeds of said policy No. 3,377,665.

#### XIV.

That accordingly there has arisen and now exists an actual controversy between plaintiff and defendants and between the respective defendants under and by virtue of the provisions of the above described five policies of insurance numbered 3,373,875, 3,377,665, 3,708,187, 5,448,542 and 5,586,988 and under and by virtue of the Mode of Settlement provisions contained in policies numbered 3,373,875, 3,377,665, 3,708,187 and 5,448,542 relating to [11] the rights of said defendants, or some of them, to the payment of all or a portion of the proceeds of said insurance policies. That plaintiff desires and hereby applies to the Court for a declaration of its rights and duties in the premises, particularly with respect to its rights and duties as to the defendants herein under and pursuant to the terms, provisions and conditions of said policies of insurance, and each of them, and the Mode of Settlement provisions contained in or made a part of said policies numbered 3,373,875, 3,377,665, 3,708,187 and 5,448,542.

#### XV.

That the claims, contentions and interests of each and all of the defendants herein in or to the proceeds of said policies of insurance are conflicting;

that plaintiff does not know and cannot safely determine for itself which one or more of said respective claims, contentions and interests are valid, and cannot safely make payment to any one or more of said defendants of the whole or any part of said insurance proceeds. That by reason of said adverse and conflicting claims plaintiff is in grave danger of being harassed, damaged and subjected to multiple and vexatious liability in respect to each of said policies on a single obligation thereunder, together with attendant costs and expenses. That plaintiff at all times has been and now is desirous and willing to pay, to the person or persons properly entitled thereto, any part or all of the proceeds payable under said policies, in accordance with the terms, provisions and conditions thereof and in accordance with all valid and unrevoked designations of beneficiaries thereunder and in accordance with all valid and unrevoked Modes of Settlement forming a part of said policies or any of them.

## XVI.

That contemporaneously with the commencement of this action plaintiff has deposited with the Clerk of this Court the sum of \$3,138.56, constituting the face amount plus dividend accruals, [12] comprising the entire proceeds of policy of insurance No. 5,886,988 and has deposited with the Clerk of this Court the further sum of \$10,496.18, constituting the face amount plus all dividend accruals, comprising the entire proceeds of policies of insurance numbered 3,373,875, 3,377,665, 3,708,187 and

5,448,542. That the deposit with the Clerk of this Court of the said sum of \$10,496.18 is conditioned upon said sum, less reasonable attorneys' fees and costs deductible therefrom as hereinafter mentioned, being returned to plaintiff by the Clerk of this Court in the event that this Court shall adjudge and decree that the attempted or purported request for change of beneficiary mentioned and described in paragraph XI hereinabove was invalid or ineffective and that accordingly the income settlement provisions contained in and made a part of said policies of insurance numbered 3,373,875, 3,377,665, 3,708,187 and 5,448,542 are in force and effect.

#### XVII.

That it was and is necessary for plaintiff to institute this action to avoid a multiplicity of actions and to avoid unnecessary costs, attorneys' fees and expenses of suit, and to prevent irreparable damage to plaintiff by reason of being subjected to multiple and vexatious liability in respect to each of said five policies of insurance upon a single obligation thereunder. That it was and is necessary for plaintiff to employ, and it has employed, the undersigned as its attorneys of record to prepare and file and prosecute this action, and plaintiff has agreed to pay said attorneys a reasonable fee for their services rendered herein. That said agreement was made and incurred in good faith by plaintiff and was necessitated by the aforesaid conflicting claims of defendants herein, and each of them. That said expenses incurred and expended by plaintiff and

such sums as plaintiff will be compelled to expend further in the prosecution of this suit and in the payment of its attorneys' fees are and should be declared to be a legal charge upon [13] the moneys heretofore paid into the Registry of this Court or the proceeds payable under said policies of insurance and said sums constituting plaintiff's expenses incurred and to be incurred, as aforesaid, in connection with this litigation, should be repaid to plaintiff from and out of the moneys deposited by it into the Registry of this Court.

Wherefore, plaintiff prays:

1. That the process of subpoena issue out of this Court addressed to and, at the request of plaintiff, be served by the United States Marshal for the United States District Court, for the Southern District of California, or for such other District wherein any of said defendants reside, requiring the several defendants to appear and answer this complaint on or before the 20th day after service of the said process.

2. That the defendants may be decreed to litigate and settle among themselves their rights or claims to the proceeds payable under said policies of insurance and deposited in Court, as aforesaid.

3. That this Court determine the validity and priority of the respective claims of defendants, and each of them, and the obligations of plaintiff and adjudicate and direct the disposition of any amounts payable under or with respect to any or all of said

policies of insurance in accordance with the terms and provisions thereof, and subject to the prior payment of plaintiff's costs, expenses and attorneys' fees.

4. That except as otherwise expressly adjudicated by decree of this Court, plaintiff be released and discharged of and from any and all obligations or liability under or arising out of or with respect to said policies of insurance, or any of them, or any provision thereunder.

5. That the defendants, and each of them, be enjoined and restrained during the pendency of this action from assigning or [14] transferring to any person or persons any claim which they or any of them may have with respect to said policies of insurance or any provisions thereof or, any proceeds thereof.

6. That the defendants be ordered and decreed to deliver up and surrender said five policies of insurance, together with all endorsements thereto, to the Clerk of this Court for endorsement in respect to any valid change of beneficiary not yet endorsed on any of said policies and thereafter, subject to the contingency hereinafter mentioned in paragraph 8 of this prayer pertaining to the four policies therein specified, for cancellation and extinguishment of all further liability of plaintiff under all five of said policies of insurance.

7. That if the said defendants are unable to deliver up said policies of insurance for any reason



whatsoever, that the decree herein shall provide that said policies of insurance or any thereof not delivered up as aforesaid have been fully paid and cancelled or otherwise that they are of no further force or effect, and that the person or persons who may be adjudged to be entitled to the amount due thereunder shall be required to give to this plaintiff a bond of indemnity or other assurance satisfactory to this Court conditioned that the plaintiff will not again be compelled to pay the amount or any amount due or payable thereunder to any other person or persons who may subsequently produce said policies of insurance irrespective of whether or not such policies of insurance are submitted to plaintiff accompanied by an assignment thereof or a request for change of beneficiary thereunder executed by said insured.

8. That in the event it is determined by this Court that the attempted or purported change of beneficiary mentioned and described in paragraph XI hereinabove is invalid or ineffective, then in such event the proceeds, inclusive of dividend accruals, of policies numbered 3,373,875, 3,377,665, 3,708,187 and 5,448,542 be returned to plaintiff, by the Clerk of this Court, after deducting [15] and first paying to plaintiff its costs of suit and reasonable attorneys' fees payable therefrom, for payment by plaintiff in installment payments to the person or persons entitled thereto pursuant to the income settlement provisions contained in said Modes of Set-

tlement made a part of said policies numbered 3,373,875, 3,377,665, 3,708,187 and 5,448,542.

9. That except as may be herein ordered by this Court upon final hearing the said defendants, and each of them, their agents, attorneys, representatives and all persons claiming by, through or under them, or either of them, may be perpetually enjoined and restrained from instituting or prosecuting any suit or proceeding or any action or actions in any state Court or in any other federal Court, or in any other Court of law or equity, against this plaintiff on account of said policies of life insurance numbered 3,373,875, 3,377,665, 3,708,187, 5,448,542 and 5,886,988 issued on the life of Paul Mildren or the moneys payable thereunder.

10. That plaintiff do have such other further, different and additional and general relief as to the Court may seem just and equitable in the premises.

NEWLIN, HOLLEY, TACKA-  
BURY & JOHNSTON,

By /s/ GEORGE W. TACKABURY,  
Attorneys for Plaintiff.

[Endorsed]: Filed September 22, 1954. [16]

United States District Court, Southern District  
of California, Central Division

Civil Action No. 17253-WB

THE MUTUAL LIFE INSURANCE COM-  
PANY OF NEW YORK, a Corporation,

Plaintiff,

vs.

ALLEEN S. MILDREN, DONALD L. MIL-  
DREN, PAUL MILDREN, JR., JESSIE  
MILDREN, DOE ONE, DOE TWO and DOE  
THREE,

Defendants.

JESSIE MILDREN,

Cross-Complainant,

vs.

ALLEEN S. MILDREN, DONALD L. MIL-  
DREN and PAUL MILDREN, JR.,

Cross-Defendants.

### CROSS-COMPLAINT

(Setting Up Claim in Interpleader Action)

Defendant and cross-complainant Jessie Mildren  
alleges:

#### I.

That jurisdiction of this Court exists under the  
provisions of Title 28, United States Code, Section  
1332. That plaintiff is a citizen and resident of the  
State of New York; that each [17] of the defend-  
ants is a citizen of one of the States of the United



States other than the State of New York; that the amount in controversy exclusive of interest and costs exceeds the sum of \$3,000.00.

## II.

That at all times mentioned herein plaintiff has been and now is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal place of business in said State, and authorized to engage in and engaging in the business of issuing policies of life insurance and kindred kinds of insurance, both in the State of New York and in the State of California.

## III.

That defendant Alleen S. Mildren was formerly the wife of Paul Mildren, the insured named and designated in the five policies of insurance hereinafter mentioned, and is a citizen and resident of the State of California.

That defendants Donald L. Mildren and Paul Mildren, Jr., are the sons of said insured, Paul Mildren, and the aforesaid defendant Alleen S. Mildren and are each citizens and residents of the State of California; that said defendants Donald L. Mildren and Paul Mildren, Jr., are each over sixteen years of age and that each of said defendants has now attained his majority and is twenty-one years of age or more.

## IV.

That Paul Mildren, the insured under each of the five hereinafter mentioned policies of insurance, and

sometimes hereinafter referred to as the "insured," died on or about July 21, 1954, in the City of Los Angeles, County of Los Angeles, State of California. That on the dates hereinafter in this paragraph IV set forth plaintiff issued to the said Paul Mildren as the insured plaintiff's policies of insurance numbered and described as follows, [18] to wit:

| Policy No. | Policy Type       | Date          | Original<br>Face Amount |
|------------|-------------------|---------------|-------------------------|
| 3,373,875  | Ordinary Life     | 10/22/24..... | \$ 2,500.00             |
| 3,377,665  | Ordinary Life     | 10/30/24..... | 2,500.00                |
| 3,708,187  | Ordinary Life     | 10/11/26..... | 3,000.00                |
| 5,448,542  | Endowment Annuity | 12/28/38..... | 10,000.00               |
| 5,586,988  | Endowment Annuity | 2/19/40.....  | 3,125.00                |

That by rider dated 2/8/43 described in Endowment Annuity Policy number 5,448,542 said policy was converted into a reduced paid up Annuity Endowment policy in the face amount of \$2,476.00.

That by reason of dividend accruals the face amount of policies numbered 3,373,875, 3,377,665, 3,708,187 and 5,586,988 has been increased as follows:

| Policy No.      | Increased<br>Face Amount |
|-----------------|--------------------------|
| 3,373,875 ..... | \$ 2,505.78              |
| 3,377,665 ..... | 2,505.78                 |
| 3,708,187 ..... | 3,008.62                 |
| 5,586,988 ..... | 3,138.56                 |

That in and by the terms of said policies and each of them it was agreed that there would be paid to the designated beneficiary named in each of said policies, upon receipt by plaintiff of due proof of the death of the insured (and, in the case of Endow-

ment Annuity policies numbers 5,448,542 and 5,586,988, upon receipt of due proof in respect to each of said two policies that such death occurred prior to the due date of the first Life Income Payment proceeds to be paid under each of said policies on December 28, 1960, and February 19, 1961, respectively), the face amounts payable under each of said policies, said respective face amounts to be payable in the manner and amounts and upon the terms, provisions and contingencies provided in said respective policies or in Modes of Settlement attached to said policies respectively and forming a part thereof. [19]

## V.

That the beneficiary originally named in said policy No. 3,373,875 was William Mildren, referred to therein as the father of said insured. That on or about January 10, 1935, said designation of beneficiary was cancelled and said insured directed and provided in effect by Mode of Settlement attached to and forming a part of said policy that, in the event defendant Donald L. Mildren survived said insured and was over sixteen years of age at the date of death of said insured, the proceeds of said policy of insurance should be paid in monthly installments of \$50.00 each, so long as said proceeds should suffice, first to said defendant Donald L. Mildren during his lifetime, then to defendant Paul Mildren, Jr., during his lifetime, then to defendant Alleen S. Mildren during her lifetime, then to the executors or administrators of the last survivor.

## VI.

That the beneficiary originally named in said Ordinary Life policy of insurance No. 3,377,665 was Jessie Wood, referred to therein as the mother of said insured; that said Jessie Wood is one and the same person as Jessie Mildren, one of the named defendants herein. That on or about October 16, 1939, said designation of beneficiary was cancelled and said insured directed and provided in effect by Mode of Settlement attached to and forming a part of said policy of insurance that, in the event defendant Paul Mildren, Jr., survived said insured and was over sixteen years of age at the date of death of said insured, the proceeds of said policy of insurance should be paid in equal monthly installments for a period of four years certain, first to said defendant Paul Mildren, Jr., during his lifetime, then to defendant Donald L. Mildren during his lifetime, and that following the death of defendant Donald L. Mildren during said four-year period the surrender value of any remaining unpaid installments should be paid to [20] defendant Alleen S. Mildren, if living, otherwise to the executors or administrators of defendant Donald L. Mildren.

## VII.

That the beneficiary originally named in said Ordinary Life policy of insurance No. 3,708,187 was defendant Alleen S. Mildren, referred to therein as the wife of said insured. That on or about January 10, 1935, said designation of beneficiary was cancelled and said insured directed and provided in

effect by Mode of Settlement attached to and forming a part of said policy of insurance that in the event defendant Alleen S. Mildren survived said insured, the proceeds of said policy of insurance should be paid to said defendant Alleen S. Mildren in equal monthly installments for twenty years certain and continuing during her lifetime, and that in the event said defendant Alleen S. Mildren should die prior to the payment of all payments certain, any remaining payments certain should be paid as and when due to such of the insured's children as should then be living, equally, and that at the death of the last survivor of said children, the commuted value of any remaining payments certain should be paid to the executors or administrators of such last survivor.

#### VIII.

That the beneficiary originally named in said Endowment Annuity policy of insurance No. 5,448,542 was defendant Alleen S. Mildren, if living, otherwise defendants Donald L. Mildren and Paul Mildren, Jr., share and share alike, or the survivor of them. That on or about February 21, 1939, said designation of beneficiary was cancelled and said insured directed and provided in effect by Mode of Settlement attached to and forming a part of said policy of insurance that in the event defendant Alleen S. Mildren survived said insured, the proceeds of said policy of insurance should be paid to said defendant Alleen S. Mildren in monthly installments of \$50.00 each so long as said proceeds should suffice, during her [21] lifetime, and after her death



should be paid to said insured's children, defendants Donald L. Mildren and Paul Mildren, Jr., or to the survivor of them, all upon the contingencies and in the manner more specifically set forth in said Mode of Settlement.

## IX.

That the beneficiary originally named in said Endowment Annuity policy of insurance No. 5,586,988 was defendant Alleen S. Mildren, if living, otherwise defendants Donald L. Mildren and Paul Mildren, Jr., equally, share and share alike, or the survivor of them.

## X.

That on or about April 8, 1953, in that certain divorce action in the Superior Court of the State of California, in and for the County of San Bernardino, entitled "Alleen S. Mildren, Plaintiff and Cross-Defendant, vs. Paul Mildren, Defendant and Cross-Complainant" and numbered 68261 in the files and records of said Court, an interlocutory decree of divorce was made and entered adjudging and decreeing that defendant Alleen S. Mildren was entitled to a divorce from said insured Paul Mildren. That said interlocutory decree provided in relevant part as follows:

"4. That the defendant and cross-complainant be and he is hereby awarded as his sole and separate property the following:

\* \* \*

"(b) Life insurance policies.

\* \* \*

“5. That each of the parties be and they are hereby ordered to deliver to the other any of the real or personal property in the possession of the person or party other than the one to whom the same is herein awarded.”

That the final decree of divorce in said divorce action [22] was made and entered on or about April 12, 1954; that said final decree continued in effect the provisions of said interlocutory decree with respect to the division of property between the parties to said divorce action, to wit, defendant Alleen S. Mildren and said insured, and specifically the portions of said interlocutory decree quoted hereinabove in this paragraph X.

#### XI.

Pursuant to said interlocutory and final divorce decrees, the insured Paul Mildren made several demands on defendant Alleen S. Mildren to deliver said insurance policies but she continued to fail and refuses to deliver them, all in violation of and contrary to the terms of said interlocutory divorce decree. On the application of the insured, the Superior Court of the State of California, in and for the County of San Bernardino, in said proceeding No. D68261, did on January 13, 1954, issue its Order to Show Cause why defendant Alleen S. Mildren should not be punished for contempt for wilfully disobeying the said Order contained in the said interlocutory divorce decree. A trial was had before said Court on the issues raised in said Order to

Show Cause on January 25 and 26, 1954, and at the conclusion of said trial the matter was taken under submission by the Court and on May 7, 1954, said Court caused its findings of fact to be filed containing the following language:

“Plaintiff has in her possession the following described life insurance policies which were awarded to defendant in the interlocutory judgment of divorce rendered herein and which now belong solely and exclusively to defendant and to which he is entitled to possession:

#397674A1, Lincoln National Life Insurance Company of Fort Wayne, Ind., on life of Donald Lee Mildren,

#399418, Lincoln National Life Insurance Company of Fort Wayne, Ind., on life of Paul Mildren, Jr., [23]

Five policies #3,373,875, 3,377,665, 3,708,187, 5,448,542, 5,586,988 in The Mutual Life Insurance Company of New York on life of Paul Mildren, Sr.”

On May 7, 1954, pursuant to the said findings of fact, the said Court caused its Order to be filed and entered in Book 125 at page 189 in the record of judgments of said Court containing the following language:

“Plaintiff is guilty of contempt because of her failure to deliver possession of the following described insurance policies to defendant and plain-



tiff is hereby ordered to deliver the following described policies to defendant as his sole and separate property or in the alternative to deliver them to the Clerk of the above-entitled Court to be held until this order becomes final either by lapse of time or on decision on appeal:

“#397674A1, Lincoln National Life Insurance Company of Fort Wayne, Ind., on life of Donald Lee Mildren,

“#399418, Lincoln National Life Insurance Company of Fort Wayne, Ind., on life of Paul Mildren, Jr.,

“Five policies, #3,373,875, 3,377,665, 3,708,187, 5,448,542, 5,586,988, in The Mutual Life Insurance Company of New York, on life of Paul Mildren, Sr.

Upon the delivery of said policies to defendant, Plaintiff will be purged of her contempt.”

Pursuant to said order, demand was made on Attorney Taylor F. Peterson who was representing defendant Alleen S. Mildren for said policies and said demand was refused. On May 14, 1954, attorney for the insured placed in the hands of the Sheriff of San Bernardino County a certified copy of the said order on defendant Alleen S. Mildren. On June 21, 1954, the said Sheriff returned the said certified copy of the said order to insured's attorney and made his return in the following words: [24]

“That after due search and diligent inquiry I have been unable to find the within named defendant Alleen S. Mildren (evading service, unable to contact).”

No appeal has been taken from said order and the time for taking an appeal has expired. The said order has never been cancelled, withdrawn or modified and is still in full force and effect and defendant Alleen S. Mildren continued to refuse to comply with said order and continued to withhold said policies in violation of said order right up to the time of the death of the insured.

## XII.

That on or about June 17, 1953, said insured executed and there was thereafter furnished to plaintiff a further and additional request for change of beneficiary under said five policies of insurance and each of them, and therein, in said request for change of beneficiary, said insured designated as his intended beneficiary under each of said policies of insurance defendant Jessie Mildren, described in said request for change of beneficiary as the mother of said insured.

## XIII.

That each of said policies of insurance contained a rider or other provision providing in effect, among other things, that the right to change the beneficiary thereunder was reserved solely to the insured, to the exclusion of the beneficiary, and that any change of beneficiary thereunder should be effective

only upon endorsement of the same on such policy of insurance by plaintiff. That the aforesaid changes of beneficiary referred to hereinabove in paragraphs V through IX, inclusive, are each properly endorsed on the respective policies of insurance in said paragraphs V through IX described, but that the change of beneficiary referred to in Paragraph XII hereinabove has never been endorsed on any of said policies of insurance by reason of said insured's failure to [25] submit said policies to plaintiff whether at the time of requesting said change of beneficiary, or otherwise, for the purpose of permitting plaintiff to endorse said change of beneficiary thereon; that said insured's failure to submit said policies of insurance for endorsement of said last mentioned change of beneficiary was due to the fact that said policies of insurance were not at the time of such requested change in the possession or under the control of said insured, but were in the possession or under the control of defendant Alleen S. Mildren and were wrongfully and in violation of the said interlocutory decree and Court order described in paragraphs X and XI of this cross-complaint withheld from said insured by said defendant Alleen S. Mildren.

#### XIV.

The aforesaid interlocutory and final decrees of divorce and the said Court order set forth in paragraph XI herein were valid and effective to constitute said insured the sole owner of said five policies of insurance as his separate property; the aforesaid change of beneficiary referred to in paragraph

XII hereinabove was valid and effective to change the beneficiary under each of said policies of insurance.

That defendant Jessie Mildren claims that said interlocutory and final decrees of divorce and said Court order and said change of beneficiary referred to in paragraph XII hereinabove were each valid and effective, and that accordingly said defendant Jessie Mildren is the sole beneficiary under said five policies of insurance and each of them and is entitled to receive payment of the entire proceeds thereof; that said defendant Jessie Mildren has demanded payment to her by plaintiff of the entire proceeds payable under each of said policies of insurance.

Wherefore, defendant and cross-complainant Jessie Mildren prays:

1. That the said insured Paul Mildren was at the time [26] of his death the sole owner of all of said policies as his separate property and that the change of beneficiary alleged in paragraph XII hereof was valid and effective to change the beneficiary under each of said policies of insurance to defendant and cross-complainant Jessie Mildren and that defendant and cross-complainant Jessie Mildren is entitled to the proceeds and death benefits of all of said policies.

2. That the Court order the Clerk of this Court to pay the proceeds of all of said policies, which have been deposited with said Clerk, to defendant Jessie Mildren.

3. That the defendant Alleen S. Mildren be ordered and decreed to deliver up and surrender said five policies of insurance, together with all endorsements thereto, to the Clerk of this Court for endorsement in respect to any valid change of beneficiary not yet endorsed on any of said policies.

4. That upon final hearing the said defendants, and each of them, their agents, attorneys, representatives and all persons claiming by, through or under them, or either of them, may be perpetually enjoined and restrained from instituting or prosecuting any suit or proceeding or any action or actions in any state Court or in any other federal Court, or in any other Court of law or equity, against any other defendant herein on account of said policies of life insurance numbered 3,373,875, 3,377,665, 3,708,187, 5,448,542, and 5,586,988 issued on the life of Paul Mildren or the monies payable thereunder.

5. That cross-complainant Jessie Mildren do have such other, further, different and additional and general relief as to the Court may seem just and equitable in the premises.

/s/ ROBERT McWILLIAMS,  
Attorney for Defendant and Cross-Complainant  
Jessie Mildren.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed October 19, 1954. [27]



[Title of District Court and Cause.]

ANSWER TO COMPLAINT  
(Declaratory Relief and Interpleader)

Jessie Mildren answering plaintiff's complaint on file herein for herself alone admits, denies and alleges:

I.

Admits the allegations contained in Paragraphs I, II and III except that this answer defendant denies that there are any claimants who claim any interest in or to the proceeds of any of the said life insurance policies with the exception of Alleen S. Mildren, Donald L. Mildren, Paul Mildren, Jr., and Jessie Mildren.

II.

Admits the allegations contained in Paragraphs IV, V, VI, VII, VIII, IX, X, XI and XII. [29]

III.

In answer to Paragraph XIII admits that defendant Jessie Mildren claims that said interlocutory and final decrees of divorce and said change of beneficiary referred to in Paragraph XI of plaintiff's complaint were each valid and effective and that accordingly said defendant Jessie Mildren is sole beneficiary under said five policies of insurance and each of them and is entitled to receive payment of the entire proceeds thereof, that said defendant Jessie Mildren has demanded payment to her by plaintiff of the entire proceeds payable under each of said policies of insurance. Except



as expressly admitted, this answering defendant lacks sufficient information or belief to enable her to answer the allegations of Paragraph XIII and basing her denial on that ground denies both generally and specifically each and every allegation contained therein.

IV.

This answering defendant admits the allegations contained in Paragraphs XIV, XV, XVI, and XVII.

Wherefore, this answering defendant Jessie Mildren prays:

1. That the defendants may be decreed to litigate and settle among themselves their rights or claims to the proceeds payable under said policies of insurance and deposited in court as alleged in plaintiff's complaint.

2. That this court determine the validity and priority of the respective claims of defendants and each of them and the obligations of plaintiff and adjudicate and direct the disposition of any amounts payable under or with respect to any or all of said policies of insurance in accordance with the terms and provisions thereof, and subject to the prior payment of plaintiff's costs, expenses and attorneys' fees.

3. That except as otherwise expressly adjudicated by decree of this court, plaintiff be released and discharged of and [30] from any and all obligations or liability under or arising out of or with

respect to said policies of insurance, or any of them, or any provisions thereunder.

4. That the defendant Alleen S. Mildren be ordered and decreed to deliver up and surrender said five policies of insurance together with all endorsements thereto to the Clerk of this court for endorsement in respect to any valid change of beneficiary not yet endorsed on any of said policies.

5. That except as may be herein ordered by this court upon final hearing, the said defendants, and each of them, their agents, attorneys, representatives, and all persons claiming by, through or under them or either of them may be perpetually enjoined and restrained from instituting or prosecuting any suit or proceeding or any action or actions in any State court or in any other Federal court or in any other court of law or equity against plaintiff or any of said defendants on account of said policies of life insurance numbered 3,373,875, 3,373,665, 3,708,187, 5,448,542 and 5,886,988 issued on the life of Paul Mildren or the monies payable thereunder.

6. That this answering defendant have such other, further, different and additional and general relief as to this court may seem just and equitable in the premises.

/s/ ROBERT McWILLIAMS,  
Attorney for Defendant Jessie Mildren.

Affidavit of service by mail attached.

[Endorsed]: Filed October 19, 1954. [31]

[Title of District Court and Cause.]

CROSS-COMPLAINT OF ALLEEN S. MIL-  
DREN TO RECOVER PROCEEDS OF  
POLICIES

Comes now Alleen S. Mildren, defendant herein, and for a cross-complaint against the defendant, Jessie Mildren, alleges:

I.

That jurisdiction of this Court exists under the provisions of Title 28, United States Code, Section 1332. That plaintiff is a citizen and resident of the State of New York; that each of the defendants is a citizen of one of the States of the United States other than the State of New York; that the amount in controversy, exclusive of interest and costs, exceeds the sum of \$3,000.00. [33]

II.

That heretofore, to wit, on the 22nd day of September, 1954, the plaintiff hereinabove named filed its complaint in the office of the Clerk of the above-entitled Court, and likewise deposited with the Clerk of said Court the proceeds of the life insurance policies hereinafter described, prayed that it be relieved of liability upon such deposit in Court, and that the parties defendant be decreed to litigate among themselves their rights, titles, and interests of, in, and to the insurance policies in said complaint described.

## III.

Alleges that this cross-complainant is the former wife of the deceased, Paul Mildren, named in the policies in said complaint and hereinafter described as the insured under and by virtue of each of said policies of insurance.

## IV.

That the defendant and cross-defendant, Jessie Mildren, is the mother of said deceased, Paul Mildren, is the mother-in-law of cross-complainant, and is the grandmother of the defendants, Donald L. Mildren and Paul Mildren Jr.

## V.

That heretofore, to wit, on or about the 15th day of September, 1950, there was commenced in the Superior Court of the State of California, in and for the County of San Bernardino, a certain suit or action entitled Alleen S. Mildren, Plaintiff, vs. Paul Mildren, Defendant; that the said Paul Mildren named therein as defendant, was and is the same person described as Paul Mildren in plaintiff's complaint on file herein, and in this answer as the insured under the policies of insurance hereinafter set forth; that said action was numbered 68261 upon the files of said Superior Court. [34]

## VI.

That said divorce action, number 68261, was prosecuted to final judgment in the above-entitled Superior Court; that under and by virtue of the terms of the judgment entered therein, there was awarded

to the said Paul Mildren "life insurance policies"; that no other or further designation in said Interlocutory Judgment of Divorce as to life insurance policies was contained in said decree.

#### VII.

That in the cross-complaint of said Paul Mildren, filed in said divorce action as aforesaid, it was alleged, under oath by the said Paul Mildren, now deceased, that the parties to said action owned and possessed as community property the following "C-Life insurance policies;" that said life insurance policies were not in said cross-complaint designated with any greater particularity than as hereinabove set forth; and that said cross-complaint and said Interlocutory Judgment of Divorce were and each of them was so vague and indefinite as to be void for uncertainty and totally unenforceable, so far as the possession and/or ownership of said life insurance policies was and is concerned.

#### VIII.

That said Interlocutory Judgment of Divorce was not appealed, vacated, set aside, nor modified in whole or in part; that a final judgment of divorce was entered in the said divorce action on or about the 12th day of April, 1954, and that said final judgment of divorce did not, by or in any of its terms, change, alter, or modify any of the terms of said Interlocutory Judgment of Divorce.

#### IX.

That each of the policies of insurance described and designated in plaintiffs' complaint on file herein



contained a provision providing in effect, among other things, that the right to change the beneficiary thereunder was reserved solely to the insured to the exclusion of the or any beneficiary, and that any change of beneficiary thereunder should be effective only upon an endorsement [35] of the same on such policy of insurance by plaintiff; that changes of beneficiaries as set forth in plaintiff's complaint in Paragraphs Five, Six, Seven, and Eight thereof, were endorsed upon the said life insurance policies by the plaintiff as is set forth in plaintiff's complaint.

#### X.

This defendant and cross-complainant is informed and believes and therefore avers the fact to be that some time after the 17th day of June, 1953, the said Paul Mildren, now deceased, sent to the plaintiff a request for change of beneficiary, wherein and whereby said deceased, Paul Mildren, attempted to change the beneficiary upon the policies described in plaintiff's complaint, wherein this defendant and cross-complainant was named as beneficiary in each of such policies, but that the said deceased did not forward to the plaintiff the policies of life insurance described in plaintiff's complaint, and this defendant and cross-complainant avers that the attempted change of beneficiary as to each of such policies, by the said deceased, Paul Mildren, was and is void and of no force and/or effect.



As and for a Second Separate and Distinct Cause of Action This Defendant and Cross-Complainant Alleges:

I.

That at the time and place when and where the said deceased, Paul Mildren, made or attempted to make a change of beneficiary as to the life insurance policies described in plaintiff's complaint, the said Paul Mildren was not then and there of sound mind, but that said deceased, Paul Mildren, was then and there incompetent by reason of mental and bodily infirmities to do or transact any business whatever.

Wherefore this defendant and cross-complainant prays:

1. That the purported change of beneficiary, alleged to have been made by the deceased, Paul Mildren, at some date subsequent [36] to the 17th day of January, 1953, be declared to be null and void and of no effect.

2. That it be adjudged by this Court that this defendant and cross-complainant is entitled to receive the proceeds of said policies, numbers 3708187, 5448542, 5886988 in accordance with the terms and provisions of said policies of insurance.

3. That it be adjudged that the cross-defendant, Jessie Mildren, has no right, title, or interest of, in, or to any of said policies and/or to any of the proceeds and/or avails thereof.

4. That defendant and cross-complainant, Alleen

S. Mildren, have such other and further relief as the nature of the case may require.

5. That she have and recover her costs of suit herein incurred.

/s/ TAYLOR S. PETERSON,  
Attorney for Defendant and  
Cross-Complainant.

Affidavits of service by mail attached.

[Endorsed]: Filed October 28, 1954. [37]

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[Title of District Court and Cause.]

CROSS-COMPLAINT OF DONALD L. MILDREN TO RECOVER PROCEEDS OF POLICY

Comes now Donald L. Mildren, defendant herein, and for a cross-complaint against the defendant, Jessie Mildren, alleges:

I.

That jurisdiction of this Court exists under the provisions of Title 28, United States Code, Section 1332. That plaintiff is a citizen and resident of the State of New York; that each of the defendants is a citizen of one of the States of the United States other than the State of New York; that the amount in controversy, exclusive of interest and costs, exceeds the sum of \$3,000.00. [39]

II.

That heretofore, to wit, on the 22nd day of September, 1954, the plaintiff hereinabove named filed its complaint in the office of the Clerk of the above-entitled Court, and likewise deposited with the Clerk of said Court the proceeds of the life insurance policies hereinafter described, prayed that it be relieved of liability upon such deposit in Court, and that the parties defendant be decreed to litigate among themselves their rights, titles, and interests of, in, and to the insurance policies in said complaint described.

III.

Alleges that this cross-complainant is the son of the deceased, Paul Mildren.

IV.

That the defendant and cross-defendant, Jessie Mildren, is the grandmother of the defendant and cross-complainant.

V.

That heretofore, to wit, on or about the 15th day of September, 1950, there was commenced in the Superior Court of the State of California in and for the County of San Bernardino, a certain suit or action entitled Alleen S. Mildren, Plaintiff, vs. Paul Mildren, Defendant; that the said Paul Mildren named therein as defendant, was and is the same person described as Paul Mildren in plaintiff's complaint on file herein, and in this answer as the insured under the policies of insurance hereinafter

set forth; that said action was numbered 68261 upon the files of said Superior Court.

## VI.

That said divorce action, number 68261, was prosecuted to final judgment in the above-entitled Superior Court; that under and by virtue of the terms of the judgment entered therein, there was awarded to the said Paul Mildren "life insurance policies"; that no [40] other or further designation in said Interlocutory Judgment of Divorce as to life insurance policies was contained in said decree.

## VII.

That in the cross-complaint of said Paul Mildren, filed in said divorce action as aforesaid, it was alleged, under oath by the said Paul Mildren, now deceased, that the parties to said action owned and possessed as community property the following, "C-Life Insurance Policies;" that said life insurance policies were not in said cross-complaint designated with any greater particularity than as hereinabove set forth; and that said cross-complaint and said Interlocutory Judgment of Divorce were and each of them was so vague and indefinite as to be void for uncertainty and totally unenforceable, so far as the possession and/or ownership of said life insurance policies was and is concerned.

## VIII.

That said Interlocutory Judgment of Divorce was not appealed, vacated, set aside, nor modified in

whole or in part; that a final judgment of divorce was entered in the said divorce action on or about the 12th day of April, 1954, and that said final judgment of divorce did not, by or in any of its terms, change, alter, or modify any of the terms of said Interlocutory Judgment of Divorce.

## IX.

That each of the policies of insurance described and designated in plaintiff's complaint on file herein contained a provision providing in effect, among other things, that the right to change the beneficiary thereunder was reserved solely to the insured to the exclusion of the or any beneficiary, and that any change of beneficiary thereunder should be effective only upon an endorsement of the same on such policy of insurance by plaintiff; that changes of beneficiaries as set forth in plaintiff's complaint in Paragraphs Five, Six, Seven, and Eight thereof, were endorsed upon the said life insurance policies by the plaintiff as is set [41] forth in plaintiff's complaint.

## X.

This defendant and cross-complainant is informed and believes and therefore avers the fact to be that some time after the 17th day of June, 1953, the said Paul Mildren, now deceased, sent to the plaintiff a request for change of beneficiary, wherein and whereby said deceased, Paul Mildren, attempted to change the beneficiary upon the policies described in plaintiff's complaint, wherein this defendant and cross-complainant was named as ben-



eficiary in one of said policies, to wit, number 3,373,875, and as a contingent beneficiary in the other policies described in plaintiff's complaint, but that the said deceased did not forward to the plaintiff the policies of life insurance described in plaintiff's complaint, and this defendant and cross-complainant avers that the attempted change of beneficiary as to each of such policies, by the said deceased, Paul Mildren, was and is void and of no force and/or effect.

As and for a Second Separate and Distinct Cause of Action this Defendant and Cross-Complainant Alleges:

I.

That at the time and place when and where the said deceased, Paul Mildren, made or attempted to make a change of beneficiary as to the life insurance policies described in plaintiff's complaint, the said Paul Mildren was not then and there of sound mind, but that said deceased, Paul Mildren, was then and there incompetent by reason of mental and bodily infirmities to do or transact any business whatever.

Wherefore this defendant and cross-complainant prays:

1. That the purported change of beneficiary, alleged to have been made by the deceased, Paul Mildren, at some date subsequent to the 17th day of January, 1953, be declared to be null and void and of no effect.



2. That it be judged by this Court that this defendant [42] and cross-complainant is entitled to receive the proceeds of said policy number 3,373,875 in accordance with the terms and provisions of said policy of insurance, and that this defendant and cross-complainant is the contingent beneficiary named in the other policies of insurance described in plaintiff's complaint, and is entitled to receive the proceeds or a part thereof in the event the contingencies specified in said policy occur.

3. That it be adjudged that the cross-defendant, Jessie Mildren, has no right, title, or interest of, in, or to any of said policies and/or to any of the proceeds and/or avails thereof.

4. That defendant and cross-complainant, Donald L. Mildren have such other and further relief as the nature of the case may require.

5. That he have and recover his costs of suit herein incurred.

/s/ TAYLOR F. PETERSON,  
Attorney for Defendant and Cross-Complainant,  
Donald L. Mildren.

Affidavits of service by mail attached.

[Endorsed]: Filed October 28, 1954. [43]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT ALLEEN  
S. MILDREN

Comes now the defendant, Alleen S. Mildren, and answering the complaint of plaintiff on file herein, admits, denies, and alleges as follows:

I.

Admits the allegations contained in Paragraphs One and Two of said complaint.

II.

Answering the allegations contained in Paragraph Three of said complaint, this defendant admits those portions thereof contained in lines ten to twenty-one, page two of said complaint, inclusive, and alleges that the defendants, Donald L. Mildren and Paul Mildren, Jr., are and each of them is over the age of twenty-one years; having no knowledge, information, or belief sufficient to enable her to answer the allegations contained in said Paragraph Three, page two of said complaint, lines twenty-two to thirty-two, inclusive, and basing her denial upon that ground, this defendant denies each and every allegation [47] contained in lines twenty-two to thirty-two, page two, Paragraph Three of said complaint.

III.

Admits the allegations contained in Paragraphs Four and Five of said complaint.

IV.

Admits the allegations contained in Paragraph Six of said complaint.

V.

Admits the allegations contained in Paragraphs Seven, Eight, Nine, and Ten of said complaint.

VI.

This answering defendant has no knowledge, information, or belief sufficient to enable her to answer the allegations contained in Paragraph Eleven of said complaint, and basing her denial upon that ground, denies generally and specifically each and every allegation contained in said Paragraph Eleven.

VII.

Answering the allegations in Paragraph Twelve of said complaint, this answering defendant admits each and every allegation contained in said Paragraph, commencing with line twenty-six, page seven of said complaint, to and including the words "policies of insurance" on line four, page eight, of said complaint; denies generally and specifically each and every other allegation contained in said Paragraph Twelve of said complaint.

VIII.

Answering the allegations contained in Paragraph Thirteen of said complaint, this defendant admits those parts or portions thereof commencing at line four, page nine, of said complaint, and ending with the words "said policies," on line twenty-

four, page nine of said complaint; admits the allegations contained in that part or portion of said Paragraph Thirteen, commencing on line twenty-five [48] page nine of said complaint, to and including the word, "thereof," on line three, page ten of said complaint; having no knowledge, information, or belief sufficient to enable her to answer the remaining allegations contained in said Paragraph Thirteen of said complaint, and basing her denial upon that ground, this defendant denies the allegations contained in said Paragraph Thirteen, commencing on line four, page ten of said complaint, ending with the words, "a part thereof," on line twelve of said complaint; admits the allegations contained in Paragraph Thirteen of said complaint, commencing with the words "that by reason," on line thirteen, page ten of said complaint, and continuing through the remainder of said paragraph on line twenty-four of said complaint.

#### IX.

Admits the allegations contained in Paragraphs Fourteen, Fifteen, and Sixteen of said complaint.

#### X.

Admits the allegations contained in Paragraph Seventeen of said complaint.

Wherefore this answering defendant prays that the above-entitled Court determine the controversy existing between the respective claimants to said policies, in accordance with law and in accordance

with the cross-complaint of this answering defendant, served and filed herewith.

/s/ TAYLOR F. PETERSON,  
Attorney for Said Defendant,  
Alleen S. Mildren.

Affidavits of service by mail attached.

[Endorsed]: Filed October 28, 1954. [49]

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[Title of District Court and Cause.]

ANSWER OF DEFENDANT  
DONALD L. MILDREN

Comes now the defendant, Donald L. Mildren, and answering the complaint of plaintiff on file herein, admits, denies, and alleges as follows:

I.

Admits the allegations contained in Paragraphs One and Two of said complaint.

II.

Answering the allegations contained in Paragraph Three of said complaint, this defendant admits those portions thereof contained in lines ten to twenty-one, page two of said complaint, inclusive, and alleges that the defendants, Donald L. Mildren and Paul Mildren Jr., are and each of them is over the age of twenty-one years; having no knowledge, information, or belief sufficient to enable him to answer the allegations contained in said Paragraph



Three, page two of said complaint, lines twenty-two to thirty-two, inclusive, and basing his denial upon that ground, this defendant denies [53] each and every allegation contained in lines twenty-two to thirty-two, page two, Paragraph Three of said complaint.

### III.

Admits the allegations contained in Paragraphs Four and Five of said complaint.

### IV.

Admits the allegations contained in Paragraph Six of said complaint.

### V.

Admits the allegations contained in Paragraphs Seven, Eight, Nine, and Ten of said complaint.

### VI.

This answering defendant has no knowledge, information, or belief sufficient to enable him to answer the allegations contained in Paragraph Eleven of said complaint, and basing his denial upon that ground, denies generally and specifically each and every allegation contained in said Paragraph Eleven.

### VII.

Answering the allegations in Paragraph Twelve of said complaint, this answering defendant admits each and every allegation contained in said Paragraph, commencing with line twenty-six, page seven of said complaint, to and including the words, "policies of insurance," on line four, page eight of



said complaint; denies generally and specifically each and every other allegation contained in said Paragraph Twelve of said complaint.

### VIII.

Answering the allegations contained in Paragraph Thirteen of said complaint, this defendant admits those parts or portions thereof commencing at line four, page nine, of said complaint, and ending with the words, "said policies," on line twenty-four, page nine of said complaint; admits the allegations contained in that part or portion of said Paragraph Thirteen, commencing on line [54] twenty-five, page nine of said complaint, to and including the word, "thereof," on line three, page ten of said complaint; having no knowledge, information, or belief sufficient to enable him to answer the remaining allegations contained in said Paragraph Thirteen of said complaint, and basing his denial upon that ground, this defendant denies the allegations contained in said Paragraph Thirteen, commencing on line four, page ten of said complaint, ending with the words, "a part thereof," on line twelve of said complaint; admits the allegations contained in Paragraph Thirteen of said complaint, commencing with the words, "that by reason," on line thirteen, page ten of said complaint, and continuing through the remainder of said Paragraph on line twenty-four of said complaint.

### IX.

Admits the allegations contained in Paragraphs Fourteen, Fifteen, and Sixteen of said complaint.

## X.

Admits the allegations contained in Paragraph Seventeen of said complaint.

Wherefore this answering defendant prays that the above-entitled Court determine the controversy existing between the respective claimants to said policies, in accordance with law and in accordance with the cross-complaint of this answering defendant, served and filed herewith.

/s/ TAYLOR F. PETERSON,  
 Attorney for Said Defendant,  
 Donald L. Mildren.

Affidavits of service by mail attached.

[Endorsed]: Filed October 28, 1954. [55]

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[Title of District Court and Cause.]

ANSWER OF ALLEEN S. MILDREN AND  
 DONALD L. MILDREN TO CROSS-COM-  
 PLAIN'T OF JESSIE MILDREN

Come now the defendants and cross-defendants, Alleen S. Mildren and Donald L. Mildren, and answering the cross-complaint of Jessie Mildren, on file herein, admit, deny, and allege as follows, to wit:

## I.

Admit the allegations contained in Paragraphs One to Ten, [59] inclusive, of said complaint.

## II.

Answering the allegations contained in Paragraph Eleven of said cross-complaint, these defendants admit that the defendant and cross-defendant, Alleen S. Mildren, has in her possession the policies of life insurance described in plaintiff's complaint, in her cross-complaint, and in the cross-complaint of the said cross-defendant and cross-complainant, Jessie Mildren; deny that the same is in violation of and/or contrary to the terms of the Interlocutory Decree of Divorce; admit that the Superior Court of the State of California, in and for the County of San Bernardino, did issue an Order to Show Cause directed to the defendant, cross-defendant, and cross-complainant, Alleen S. Mildren; admit that the Court filed Findings of Fact, containing the language alleged in said Paragraph Eleven, line twenty-four, page seven, to and including line three, page eight of said cross-complaint; admit the allegations contained in said Paragraph Eleven, page eight, lines four to twenty-four, inclusive thereof; allege that said Order so made as aforesaid was beyond the jurisdiction of said Superior Court to make, in that it purports to order certain described policies of insurance to be delivered by the defendant, cross-defendant, and cross-complainant, Alleen S. Mildren, whereas said Interlocutory Decree of Divorce contained no language identifying any specific policies of insurance these cross-defendants; having no knowledge, information, or belief sufficient to enable them to answer the same, and basing their denial upon that ground, deny that

any demand was made upon Taylor F. Peterson for any of the policies described in plaintiff's complaint on file herein and likewise described in these answering defendants' separate answers and cross-complaints; allege that the said policies so described as aforesaid have at all times been in the possession and under the control of the said Alleen S. Mildren; having no knowledge sufficient to enable them to answer [60] the allegations contained in commencing on line twenty-seven, page eight, of said cross-complaint, beginning with the words "on May 14, 1954," and to and including the end of line three, page nine, of said cross-complaint, and basing their denial upon that ground, these defendants deny each and every allegation therein contained; admit that no appeal has been taken from said Order; deny that said Order is in full force and effect and aver that the same is void; deny that the said Alleen S. Mildren holds said policies in violation of any valid Order.

### III.

Having no knowledge, information, and/or belief sufficient to enable them to answer the allegations of Paragraph Twelve of said cross-complaint, and basing their denial upon that ground, these defendants, cross-defendants, and cross-complainants deny each and every allegation contained in said Paragraph Twelve.

### IV.

Answering the allegations contained in Paragraph Thirteen of said cross-complaint, these defendants, cross-defendants, and cross-complainants

admit the allegations contained in said Paragraph, commencing on line twenty-one thereof and ending with the words "said policies of insurance" on line thirty-two of said page nine of said cross-complaint; deny generally and specifically, except as hereinabove specifically admitted, each and every allegation set forth in said Paragraph Thirteen.

V.

Answering the allegations contained in said Paragraph Fourteen of said cross-complaint, these defendants, cross-defendants, and cross-complainants deny each and every allegation therein contained.

Wherefore these defendants, cross-defendants, and cross-complainants pray that cross-complainant, Jessie Mildren, take nothing by reason of her cross-complaint and that these defendants, [61] cross-defendants, and cross-complainants have judgment as prayed for in their cross-complaints on file herein.

/s/ TAYLOR F. PETERSON,  
Attorney for Said Defendants, Cross-Defendants,  
and Cross-Complainants.

[Endorsed]: Filed November 3, 1954. [62]



[Title of District Court and Cause.]

ANSWER TO CROSS-COMPLAINT OF DONALD L. MILDREN TO RECOVER PROCEEDS OF POLICY

In answer to cross-complainant Donald L. Mildren's cross-complaint, cross-defendant Jessie Mildren admits, denies and alleges:

I.

Admits the allegations contained in Paragraphs I, II, III, IV, V, VI.

II.

In answer to Paragraph VII alleges that said interlocutory [66] judgment of divorce was valid and enforceable. Except as alleged, denied both generally and specifically each and every allegation contained in Paragraph VII.

III.

The Superior Court of the State of California in and for the County of San Bernardino in the said divorce action entitled *Alleen S. Mildren vs. Paul Mildren*, case No. D 68261, after the hearing on an order to show cause why *Alleen S. Mildren* should not be punished for contempt made and filed its Findings of Fact on May 7, 1954 in said action which provides in part as follows:

“Plaintiff has in her possession the following described life insurance policies which were awarded to defendant in the interlocutory judgment of di-

voice rendered herein and which now belong solely and exclusively to defendant and to which he is entitled to possession :

“ #397674A1, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Donald Lee Mildren,

“ #399418, Lincoln National Life Insurance Company of Fort Wayne, Ind., on life of Paul Mildren, Jr.

“ Five policies, #3373,875, 3377,665, 3708,187, 5448,542, 5586,988 in The Mutual Life Insurance Company of New York on life of Paul Mildren, Sr.”

In the same action and pursuant to said Findings, the court made and filed its Order on May 7, 1954, which was entered on May 7, 1954, in Book 125, Page 189 of Judgments in the said court which provided in part as follows :

“ Plaintiff is guilty of contempt because of her failure to deliver possession of the following described insurance policies to defendant and plaintiff is hereby ordered to deliver the following described policies to defendant as his sole and separate property or in the alternative to deliver them to the Clerk of the above [67] entitled court to be held until this order becomes final either by lapse of time or on decision on appeal :

“ #397674A1, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Donald Lee Mildren,

“ #399418, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Paul Mildren, Jr.

“Five policies, #3373,875, 3377,665, 3708,187, 5448,542, 5586,988, in The Mutual Life Insurance Company of New York on life of Paul Mildren, Sr.”

Upon the delivery of said policies to defendant, plaintiff will be purged of her contempt.”

Said Findings of Fact and Order have never been changed, modified or set aside and no appeal has been taken therefrom and the time for taking an appeal has now expired. Except as expressly alleged, admits all of the allegations contained in Paragraph VIII.

#### IV.

Admits the allegations contained in Paragraph IX.

#### V.

In answer to Paragraph X, alleges that at the time said request for change of beneficiary was filed with the plaintiff, The Mutual Life Insurance Company of New York, cross-complainant Alleen S. Mildren was in possession of said policies and refused after demand made upon her to turn them over to the decedent, Paul Mildren, and for that reason the said Paul Mildren was prevented from and was unable to send the said policies to the plaintiff to have the change of beneficiary endorsed thereon. Alleges that the said change of beneficiary as to each of said policies was valid and binding and enforceable. Except as expressly alleged, admits all of the allegations contained in Paragraph X.

Answer to Second Cause of Action

I.

Denies each and every allegation contained in Paragraph I [68] and alleges that the deceased Paul Mildren was at all times mentioned in said cross-complaint of sound mind.

Wherefore, Jessie Mildren, this answering cross-defendant prays that cross-complainant Donald L. Mildren take nothing by his cross-complaint and that the proceeds of said life insurance policies be awarded to cross-defendant Jessie Mildren, together with her costs of suit and such other relief as to the court seems just.

/s/ ROBERT McWILLIAMS,  
Attorney for Cross-Defendant  
Jessie Mildren.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 3, 1954. [69]

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[Title of District Court and Cause.]

ANSWER TO CROSS-COMPLAINT OF ALLEEN S. MILDREN TO RECOVER PROCEEDS OF POLICIES.

Cross-defendant Jessie Mildren answering cross-complainant Alleen S. Mildren's cross-complaint on file herein admits, denies and alleges:

## I.

Admits the allegations contained in Paragraphs I, II, III, IV, V and IX.

## II.

In answer to Paragraph VII alleges that the said interlocutory judgment of divorce was valid and enforceable. Except as [71] alleged, denies both generally and specifically each and every allegation contained in Paragraph VII.

## III.

The Superior Court of the State of California in and for the County of San Bernardino in the said divorce action entitled Alleen S. Mildren vs. Paul Mildren, case No. D 68261, after the hearing on an order to show cause why Alleen S. Mildren should not be punished for contempt made and filed its Findings of Fact on May 7, 1954 in said action which provides in part as follows:

“Plaintiff has in her possession the following described life insurance policies which were awarded to defendant in the interlocutory judgment of divorce rendered herein and which now belong solely and exclusively to defendant and to which he is entitled to possession:

“ #397674A1, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Donald Lee Mildren,

“ #399418, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Paul Mildren, Jr.,



“Five policies, #3373,875, 3377,665, 3708,187, 5448,542, 5586,988 in The Mutual Life Insurance Company of New York on life of Paul Mildren, Sr.”

In the same action and pursuant to said Findings, the court made and filed its Order on May 7, 1954, which was entered on May 7, 1954, in Book 125, Page 189 of Judgments, in the said court which provided in part as follows:

“Plaintiff is guilty of contempt because of her failure to deliver possession of the following described insurance policies to defendant and plaintiff is hereby ordered to deliver the following described policies to defendant as his sole and separate property or in the alternative to deliver them to the Clerk of the above entitled court to be held until this order becomes [72] final either by lapse of time or on decision on appeal:

“#397674A1, Lincoln National Life Insurance company of Fort Wayne, Ind., on Life of Donald Lee Mildren,

“#399418, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Paul Mildren, Jr.,

“Five policies, #3373,875, 3377,665, 3708,187, 5448,542, 5586,988, in The Mutual Life Insurance Company of New York on life of Paul Mildren, Sr.

Upon the delivery of said policies to defendant, plaintiff will be purged of her contempt.”

Said Findings of Fact and Order have never been changed, modified, or set aside and no appeal has been taken therefrom and the time for taking an appeal has now expired. Except as expressly alleged, admits all of the allegations contained in Paragraph VIII.

#### IV.

In answer to Paragraph X, alleges that at the time said request for change of beneficiary was filed with the plaintiff, The Mutual Life Insurance Company of New York, cross-complainant Alleen S. Mildren was in possession of said policies and refused after demand made upon her to turn them over to the decedent, Paul Mildren, and for that reason the said Paul Mildren was prevented from and was unable to send the said policies to the plaintiff to have the change of beneficiary endorsed thereon. Alleges that the said change of beneficiary as to each of said policies was valid and binding and enforceable. Except as expressly alleged, admits all of the allegations contained in Paragraph X.

#### Answer to Second Cause of Action

##### I.

Denies each and every allegation contained in Paragraph I and alleges that the deceased Paul Mildren was at all times mentioned in said cross-complaint of sound mind.

Wherefore, Jessie Mildren, this answering cross-defendant [73] prays that cross-complainant Alleen S. Mildren take nothing by her cross-complaint and that the proceeds of said life insurance policies be awarded to cross-defendant Jessie Mildren, together

with her costs of suit and such other relief as to the court seems just.

/s/ ROBERT McWILLIAMS,  
Attorney for Cross-Defendant  
Jessie Mildren.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 3, 1954. [74]

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United States District Court, Southern District of  
California, Central Division

Civil Action No. 17253-WB

THE MUTUAL LIFE INSURANCE COMPANY  
OF NEW YORK, a Corporation,  
Plaintiff,

vs.

ALLEEN S. MILDREN, et al.,  
Defendants.

JESSIE MILDREN,  
Cross-Complainant,

vs.

ALLEEN S. MILDREN, et al.,  
Cross-Defendants.

ORDER DISCHARGING PLAINTIFF AND  
FOR PAYMENT OF ATTORNEYS' FEES  
AND COSTS

Pursuant to the stipulation of all parties hereto,  
filed herein on January 6, 1955, and the court having

read and considered the same and being fully advised,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed as follows:

1. That the allegations in paragraphs I to X, inclusive, [90] and XIV to XVII, inclusive, of plaintiff's complaint are true. That plaintiff's complaint for declaratory relief and interpleader on file in the above entitled action is properly filed. That defendants Alleen S. Mildren, Donald Lee Mildren, Paul Mildren, Jr. and Jessie Mildren constitute each and all of the parties claiming or subject to claiming an interest in or to the proceeds of or amounts payable under or by virtue of those certain ordinary life insurance policies and endowment annuity policies issued by plaintiff to Paul Mildren as insured, and more particularly described in paragraph IV of plaintiff's complaint, to wit, ordinary life policies Nos. 3,373,875 and 3,377,665, and those certain endowment annuity policies Nos. 3,708,187, 5,448,542 and 5,586,988. That each of said four defendants above named have appeared and filed an answer herein.

2. That the full face amount plus dividend accruals, constituting the entire proceeds of policy No. 5,586,988, was and is the sum of \$3,138.56, and the full face amount plus dividend accruals, constituting the entire proceeds of policies Nos. 3,373,875, 3,377,665, 3,708,187 and 5,448,542, was and is the sum of \$10,496.18. That the aforesaid sums of \$3,138.56 and \$10,496.18 have heretofore at the time of filing the complaint herein been paid by plaintiff

into the registry of this court and at all times subsequent thereto have been and still remain on deposit in said registry.

3. That defendants, and each of them, are hereby enjoined and restrained during the pendency of this action from assigning or transferring to any person or persons any claim which they or any of them may have with respect to said five policies of insurance, or any of them, or any provisions thereof or any proceeds thereof.

4. That subject to the contingencies hereinafter in paragraph 6 mentioned and set forth, said policies of insurance shall be and they hereby are cancelled and terminated and adjudged and decreed to be of no further force or effect, and that plaintiff shall be and is hereby released and discharged of and from any and [91] all obligations or liability, and of and from any and all claims and demands of whatsoever nature of each of the defendants appearing herein and the assigns, personal representatives and successors in interest of each of them, under or arising out of or with respect to said above numbered and described policies of insurance or the proceeds thereof, or any benefit, interest or equity therein or thereunder, or any provision thereof. That except as may be herein ordered by this court upon final hearing the said defendants, and each of them, their agents, attorneys, representatives and all persons claiming by, through or under them, or either of them, shall be perpetually enjoined and restrained from instituting or prosecuting any suit or proceeding or any action or actions in this or any other federal or state court, against plaintiff based upon any



of said policies of insurance numbered 3,373,875, 3,377,665, 3,708,187, 5,448,542 and 5,586,988, or the moneys payable thereunder.

5. That defendants herein, and each of them, be and they are hereby ordered and required to plead and litigate among themselves concerning their respective claims under or arising out of or with respect to said policies of insurance, or the proceeds thereof, or any benefit, interest or equity therein or thereunder, or any provision thereof.

6. That in the event it is determined by this court that the attempted or purported change of beneficiary mentioned and described in paragraph XI of plaintiff's complaint is invalid or ineffective, then in such event, following the deduction and payment to plaintiff of its costs of suit and reasonable attorneys' fees herein, the final judgment herein shall order and provide that the proceeds, inclusive of dividend accruals, of policies numbered 3,373,875, 3,377,665, 3,708,187 and 5,448,542 shall be returned to plaintiff by the clerk of this court for payment by plaintiff in installment payments to the person or persons adjudicated by this court to be entitled thereto pursuant to the income settlement [92] provisions contained in the Modes of Settlement made a part of said four policies.

7. That the final judgment herein shall direct and order that the defendant or defendants having possession thereof deliver up and surrender the said five policies of insurance involved herein, together with all endorsements thereto, to plaintiff for endorsement in respect to any valid change of bene-

ficiary not yet endorsed on any of said policies and, subject to the contingency hereinabove mentioned in paragraph 6 of this order pertaining to the four policies therein specified, so that plaintiff may mark and indicate on all of said policies that all further liability of plaintiff thereunder has been terminated and extinguished. That if the said defendants are unable to deliver up said five policies of insurance for any reason whatsoever, that the final judgment and decree herein shall provide and confirm that (subject to the contingency in paragraph 6 of this order set forth with respect to the four policies therein specified) said policies of insurance or any thereof not delivered up as aforesaid have been fully paid and cancelled and otherwise are of no further force or effect. That as a condition to the payment to any person or persons who may be adjudged to be entitled to any amount payable under the above described policies, or any of them, plaintiff shall be permitted to make application to this court for the purpose of causing a provision to be inserted in said final judgment providing for such additional protection or security as may be deemed proper in the premises in order to assure and protect plaintiff from being obliged or called upon to pay any further or additional amount or amounts whatsoever in respect to any policy or policies aforementioned which for any reason are not surrendered to plaintiff prior to the payment of the proceeds thereof adjudicated by this court to be payable thereunder to the person or persons found to be entitled thereto.

8. That the clerk of this court shall pay from the moneys [93] deposited by plaintiff into the registry

of this court unto Newlin, Holley, Tackabury & Johnston, attorneys for plaintiff herein, the sum of \$19.50, constituting plaintiff's costs of suit herein incurred, and the sum of \$750.00 which is hereby found to constitute a reasonable attorneys' fee herein and which is hereby awarded to plaintiff.

9. That jurisdiction of this action is retained by this court for determination of the respective rights of defendants in and to the insureds' proceeds and funds involved herein.

10. That the final judgment herein shall be submitted for approval as to form to plaintiff as well as to each of the other parties hereto.

Dated: January 7, 1955.

/s/ WM. M. BYRNE,  
Judge.

Approved as to form pursuant to Rule 7:

NEWLIN, HOLLEY, TACKA-  
BURY & JOHNSTON,

By /s/ GEORGE W. TACKABURY,  
Attorneys for Plaintiff.

/s/ ROBERT McWILLIAMS,  
Attorney for Defendant Jessie  
Mildren.

/s/ TAYLOR F. PETERSON,  
Attorney for Defendants Alleen S. Mildren and  
Donald L. Mildren.

WOOD, CRUMP, ROGERS,  
ARNDT & EVANS,

By /s/ A. M. ROGERS, JR.,  
Attorneys for Defendant Paul  
Mildren, Jr.

[Endorsed]: Filed January 7, 1955.

Judgment docketed and entered January 7, 1955.

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[Title of District Court and Cause.]

### PRE-TRIAL ORDER

At a conference held under Rule 16 F. R. C. P. by direction of Honorable William M. Byrne, Judge, the following admissions and agreements of fact were made by the parties and require no proof:

(1) The insured, Paul Mildren, is the son of Jessie Mildren; the father of Donald L. Mildren and Paul Mildren Jr.; and was the husband of Alleen S. Mildren until the marriage was dissolved by divorce.

(2) A divorce action was filed by Alleen S. Mildren, as plaintiff, against the said Paul Mildren, in the Superior Court of the State of California, in and for the County of San Bernardino, Action No. 68261, on September 20, 1950, an Interlocutory decree of [116] Divorce was made and entered in said action on April 8, 1953, in Judgment Book 121, Page 75, and which contained in part the following language:

There is hereby set aside and awarded to the defendant and cross-complainant as his sole and separate property:

- (a) The trailer.
- (b) Life insurance policies.
- (c) Cash in the sum of \$7800.00.

“5. That each of the parties be and they are hereby ordered to deliver to the other any of the real or personal property in the possession of the person or party other than the one to whom the same is herein awarded.”

(3) A final decree of divorce was made and entered in said divorce action on April 12, 1954, in Book 125, Page 28 of Judgments.

(4) On December 2, 1953, in said divorce action at the request of Paul Mildren, an order to show cause why Alleen S. Mildren should not be punished for contempt for her failure, among other things, to turn over to Paul Mildren the following described insurance policies was issued by the Superior Court of San Bernardino County:

#397674A1, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Donald Lee Mildren.

#399418, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Paul Mildren Jr.,

Five policies, #3373,875—3377,665—3708,187—5448,542—5586,988, in the Mutual Life Insur-



ance Company of New York on life of Paul Mildren Sr.

Said order to show cause was served on Alleen S. Mildren on December 4, 1953, by a deputy of the Sheriff of the County of San Bernardino.

(5) A certified copy of the said interlocutory decree in said divorce action was served on Alleen S. Mildren by the Sheriff's [117] office of San Bernardino County on December 23, 1953.

(6) On January 13, 1954, in said divorce action at the request of Paul Mildren, the Court issued an order to show cause why Alleen S. Mildren should not be punished for contempt for her failure to turn over to Paul Mildren the following described life insurance policies:

#397674A1, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Donald Lee Mildren,

#399418, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Paul Mildren, Jr.,

Five policies, #3373,875—3377,665—3708,187—5448,542—5586,988, in the Mutual Life Insurance Company of New York on life of Paul Mildren, Sr.

(7) Said order to show cause issued on January 13, 1954, was served by the Sheriff's office of San Bernardino County on Alleen S. Mildren on January 14, 1954.

(8) A trial was held before said Superior Court on January 25 and 26, 1954, at which time some four separate matters were heard by the Court. These included:

1. An action brought in claim and delivery by Alleen S. Mildren against Paul Mildren and Jessie Mildren to recover certain personal property, said to have been converted by Paul Mildren and Jessie Mildren to their own use, which resulted in a judgment in favor of the defendants.

2. An action for forceable detainer for waste and for value of use and occupation of premises brought by Alleen S. Mildren against Paul Mildren and Jessie Mildren, which resulted in a judgment in favor of the defendants.

3. An action to enjoin and restrain the Sheriff of San Bernardino County from proceeding to sell certain property of the plaintiff Alleen S. Mildren, which had been levied upon by the Sheriff in an attempt to enforce the provisions of the [118] judgment referred to hereinabove, wherein and whereby the defendant Paul Mildren was awarded cash in the sum of \$7800.00. A judgment in favor of the defendant in that action followed.

4. A proceeding in contempt based on the order to show cause hereinabove set forth and which resulted in the issuance of an order in action No. 68261 as follows:

“Plaintiff is guilty of contempt because of her failure to deliver possession of the following de-

scribed insurance policies to defendant and plaintiff is hereby ordered to deliver the following described policies to defendant as his sole and separate property or in the alternative to deliver them to the Clerk of the above entitled court to be held until this order becomes final either by lapse of time or on decision on appeal:

“ #397674A1, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Donald Lee Mildren,

“ #399418, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Paul Mildren, Jr.,

“ Five policies, #3373,875, 3377,665, 3708,187, 5448,542, 5586,988, in The Mutual Life Insurance Company of New York on life of Paul Mildren, Sr.

Upon the delivery of said policies to defendant, plaintiff will be purged of her contempt.”

(9) No service of said order was ever made upon the said Alleen S. Mildren.

(10) There was executed by the said Paul Mildren and introduced in evidence in said action No. 68261, a deed and property settlement agreement wherein said Paul Mildren transferred to the said Alleen S. Mildren all property contained in the home property which was then located at 346 North Mango Street, Fontana, California, and which has

now been re-numbered 8208 Mango Street, Fontana, California.

(11) The Findings of Fact signed and filed in connection [119] with the trial of said order to show cause on May 7, 1954 by the Superior Court of the State of California, in and for the County of San Bernardino, in the said divorce action found among other things:

“Plaintiff (Alleen S. Mildren) has in her possession the following described life insurance policies which were awarded to defendant (Paul Mildren) in the interlocutory judgment of divorce rendered herein and which now belong solely and exclusively to the defendant (Paul Mildren) and to which he is entitled to possession:

“#397674A1, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Donald Lee Mildren,

“#399418, Lincoln National Life Insurance Company of Fort Wayne, Ind. on life of Paul Mildren, Jr.,

“Five policies, #3373,875, 3377,665, 3708,187, 5448,542, 5586,988 in The Mutual Life Insurance Company of New York on life of Paul Mildren, Sr.”

(12) All of the judgments, decrees and orders referred to in said divorce action have become final and none of them have ever been appealed, vacated or modified in any way.

(13) On or about April 12, 1954, Robert McWilliams as attorney for the said Paul Mildren, wrote and delivered through the United States mail to Attorney Taylor F. Peterson a letter in the following words:

“Dear Mr. Peterson:

“As I understand your last letter, the only part of the decision made by Judge Curtis which you are contesting is the one with reference to the unlawful detainer action.

“I assume, therefore, that you will be willing to turn over the life insurance policies to me for Dr. Mildren. [120]

“If I am correct, please let me know how you want to handle this, if you want to mail them to me or just how you want them delivered.

“Very truly yours,”

(14) The said Attorney Taylor F. Peterson on or about April 19, 1954, wrote and delivered through the mail to the said Robert McWilliams a letter as follows:

“Dear Mr. McWilliams:

“This will acknowledge receipt of your letter dated April 12, 1954.

“I do not have the life insurance policies in my possession. Mrs. Mildren has, and she has not as yet given me instructions as to what she wished me to do. After judgment has been entered and Notice of Entry of Judgment is sent me, it will probably be necessary for me to consult with her again to see



whether she desires to file Notice of Intention to move for a new trial, or to appeal or whether she intends to comply with the order.

“With regard to the matter of the personal property, I instructed Mrs. Mildren to have it delivered to the Fontana Van & Storage Company, trailer included, and for Fontana Van & Storage Company, in turn, to notify you or Dr. Mildren when the property had been received by them. This will, I think, take care of this situation.

“Thank you for your courtesy in this matter, I am  
“Very truly yours,”

(15) On or about June 17, 1953, the said Paul Mildren executed and delivered to The Mutual Life Insurance Company of New York written requests for change of beneficiaries, requesting that the beneficiaries on all policies involved in this suit be changed to Jessie Mildren as the mother of the insured. [121]

### Issues of Fact to Be Tried

(1) Whether or not there was any evidence taken before the Superior Court at the trials held on January 25th and 26th, 1954, from which a court could find that any insurance policies were transferred to the said Paul Mildren under and by virtue of the interlocutory final judgments of divorce in action No. 68261.

(2) Whether or not the life insurance policies, which are the subject of the present action were included in the personal property in the house at 346 North Mango Street, Fontana, California at the

time and place when and where the property settlement agreement was entered into.

(3) Whether or not the life insurance policies which are the subject of the present action were delivered by Paul Mildren, deceased, to Alleen S. Mildren contemporaneously with the execution and delivery of a certain written agreement dated January 28, 1948, and formed a part of the same transaction.

(4) Was any evidence taken at the trial on January 25 and 26, 1954, in the said divorce action as to the said order to show cause.

(5) On May 18, 1954, was a certified copy of the order made on the trial of the order to show cause referred to on page 4, lines 4 to 22, hereof given to the Sheriff's Office of San Bernardino County by the said Paul Mildren for the purpose of serving it on Alleen S. Mildren, and on June 21, 1954, did the said Sheriff's Office make a return as follows:

“Sheriff's Office

“County of San Bernardino—ss.

“I, Eugene L. Mueller, Sheriff of the County of San Bernardino, hereby certify that I received the within Order on the 18th day of May, 1954, and that after due search and diligent inquiry I have been unable to find the within named defendant Alleen S. Mildren [122] (Evading service, unable to contact) in San Bernardino County.

“Dated June 21st, 1954.

“/s/ EUGENE L. MUELLER,  
“Sheriff.

“By JOHN BROZAN,  
“Deputy Sheriff.”

(6) On August 10, 1954, did David T. Harshman make an affidavit of service of said order made on the trial of the said order to show cause certifying that he served the said order on Alleen S. Mildren August 10, 1954? Was service effected?

#### Issues of Law

(1) Were the insurance policies, which are the subject of the present action, delivered and transferred by Paul Mildren, deceased, to Alleen S. Mildren so that title to said policies passed to her on or about January 28, 1948?

(2) Did the interlocutory and final decrees and the Order made on trial of the orders to show cause in action No. 68261 in the Superior Court of the State of California in and for the County of San Bernardino operate to transfer title to the policies of insurance which are the basis of the present action to the said Paul Mildren?

(3) In the event that the decree did not transfer title to any policies to the defendant Paul Mildren, were the policies community property? Were they paid for from earnings of the parties, namely Alleen S. Mildren and Paul Mildren, and as to the

cross-defendant Donald L. Mildren, did the policy in his favor pass to him upon the death of his father?

(4) In the event the court finds that the decree of divorce did not transfer title to the policies to Paul Mildren, did Paul Mildren make a valid gift of his one-half interest in the policies to his mother Jessie Mildren? [123]

(5) Is Alleen S. Mildren entitled to all the proceeds of the policies because of the fact that no change of beneficiary was ever effected?

(6) Was the attempted change of beneficiary on all of said policies invalid because of the failure to endorse on the policy contract such changes?

(7) Did the Mutual Life Insurance Company of New York, plaintiff herein, waive the requirement that a change of beneficiary should be attached to and endorsed upon the policies by filing this interpleader suit?

(8) Was the requirement of attaching the request for change of beneficiary to the insurance policies excused because the policies were not available and could not be obtained by the insured Paul Mildren?

Dated: May 2, 1955.

/s/ WM. M. BYRNE,

Judge of the U. S. District  
Court.

The foregoing pre-trial order is hereby approved:

/s/ ROBERT McWILLIAMS,  
Attorney for Cross-Complainant  
Jessie Mildren.

/s/ TAYLOR F. PETERSON,  
Attorney for Cross-Defendants Alleen S. Mildren  
and Donald L. Mildren.

WOOD, CRUMP, ROGERS,  
ARNDT & EVANS.

By /s/ A. M. ROGERS, JR.,  
Attorney for Cross-Defendant  
Paul Mildren, Jr.

[Endorsed]: Filed May 2, 1955. [124]

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[Title of District Court and Cause.]

MINUTES OF THE COURT

MAY 31, 1955

Present: Hon. Wm. M. Byrne, District Judge.

Proceedings:

For trial. At 9:50 A.M. court convenes herein, and Court orders trial proceed.

Alleen S. Mildren is called, sworn, and testifies for cross-defendants.

Cross-Def'ts' Ex. A is received in evidence.

Cross-Complainants Jessie Mildren's Ex. 1 is received in evidence.



Melbourne S. Hamilton is called, sworn, and testifies for cross-Def'ts.

Cross-Def'ts' Ex. B is received in evidence. (Photo-copies to be substituted).

Donald Lee Mildren, Edith V. Maycock, and Wm. Augustus Bell, respectively, are called, sworn, and testify for cross-defendants.

Attorney McWilliams objects to testimony of Witness Bell as immaterial.

At 10:55 A.M. court recesses. At 11:10 A.M. court reconvenes herein, and all being present as before.

Cross-Complainant's Ex. 2 and 3 are admitted in evidence.

Witness Hamilton resumes the stand and testifies re missing Exhibit E in Superior Court file.

Court states counsel may have a continuance to locate said exhibit.

Clerk Hamilton, in charge of file, is excused until June 1, 1955, and Court instructs that photo-copies of documents in Superior Court file be made today and returned to Court June 1, 1955.

Cross-complainant rests but reserves right to introduce Exhibit E.

Cross-defendant rests subject to introduction of said Exhibit E.

It is ordered that cause is continued to June 1, 1955, 9:45 A.M., for further trial.

JOHN A. CHILDRESS,  
Clerk. [125]

[Title of District Court and Cause.]

## MINUTES OF THE COURT

JUNE 1, 1955

Present: Hon. Wm. M. Byrne, District Judge.

Proceedings:

For further trial. At 9:55 A.M. Court orders trial proceed.

Attorney McWilliams makes a statement re missing Exhibit E. Court and counsel confer re photostat copies ordered from Superior Court file. Court states that in accordance with stipulation, the documents ordered will be substituted as soon as the Clerk of the Superior Court has produced same from file and that at that time the Superior Court file will be released to the Clerk.

Counsel stipulate that original insurance policies may be withdrawn and copies substituted, and it is so ordered.

Court orders case continued to 2 P.M., unless photostat copies are available before then.

At 10:05 A.M. court recesses. At 11:30 A.M. court reconvenes herein, and all being present as before, including counsel for both sides, Court orders trial proceed.

Cross-Complainant's Ex. 4 is admitted in evidence.

Cross-Defendants' Ex. C is admitted in evidence.

Court orders said file of the Superior Court withdrawn and that it not be a part of the record herein, and that documents copied from said file and introduced herein are the only ones admitted in evidence.

Court orders said file returned to the Clerk of the Superior Court.

Both sides rest.

It is ordered that cause be submitted on briefs to be filed 10x10x5, cross-complainant to file first.

Attorney Rogers makes a statement to the Court re interest of Paul Mildren, Jr., and Court makes a statement re ruling on policies of insurance.

At 11:50 A.M. court adjourns.

JOHN A. CHILDRESS,  
Clerk. [126]

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[Title of District Court and Cause.]

## MINUTES OF THE COURT

OCTOBER 27, 1955,

Present: Hon. Wm. M. Byrne, District Judge;

Proceedings:

For settlement of the findings of fact, conclusions of law and judgment.

Attorney Peterson argues in support of the objections of defendants Alleen S. Mildren and Donald L. Mildren to the form of findings and conclusions proposed by defendant Jessie Mildren.

Attorney McWilliams argues in opposition to said objections.

It is ordered that said objections are sustained, except as to objection V, which is withdrawn by

Attorney Peterson; Attorney McWilliams to prepare and present revised findings of fact and conclusions of law, pursuant to said ruling. [165]

JOHN A. CHILDRESS,

By /s/ L. B. FIGG,  
Deputy Clerk.

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[Title of District Court and Cause.]

FINDINGS OF FACT IN FAVOR OF CROSS-  
COMPLAINANT JESSIE MILDREN

Plaintiff having paid into the registry of this court the sum of \$13,634.74, which is the total fund in controversy and said sum being still on deposit in said registry and plaintiff having been discharged by order of this court entered pursuant to stipulation of all parties, and a pre-trial order having been signed by Robert McWilliams as attorney for cross-complainant, Jessie Mildren; by Taylor F. Peterson as attorney for cross-complainants Alleen S. Mildren and Donald L. Mildren; and by Wood, Crump, Rogers, Arndt & [166] Evans by A. M. Rogers, Jr., as attorneys for defendant Paul Mildren, Jr., and filed herein whereby certain stipulations of fact, stated therein, were agreed upon and the case being called for trial on May 31, 1955, at the hour of 9:45 a.m., in courtroom 4 before William M. Byrne, judge presiding, sitting without a jury, a jury having been expressly waived, and Robert McWilliams appearing as attorney for

cross-Complainant Jessie Mildren and Taylor F. Peterson appearing as attorney for cross-complainants Alleen S. Mildren and Donald L. Mildren and Wood, Crump, Rogers, Arndt & Evans by A. M. Rogers, Jr., appearing as attorneys for defendant Paul Mildren, Jr., and cross-complainants Jessie Mildren, Alleen S. Mildren and Donald L. Mildren being present in court and evidence both oral and documentary having been introduced on behalf of cross-complainants Jessie Mildren, Alleen S. Mildren and Donald L. Mildren, and the court having considered the same and having received and read briefs by counsel for cross-complainants Jessie Mildren, Alleen S. Mildren and Donald L. Mildren and being fully advised, makes the following findings of fact:

### I.

That jurisdiction of this court exists under the provisions of Title 28, United States Code, Section 1332. That plaintiff is a citizen and resident of the State of New York; that each of the defendants is a citizen of one of the States of the United States other than the State of New York; that the amount in controversy exclusive of interest and costs exceeds the sum of \$3,000.00.

### II.

That at all times mentioned herein plaintiff has been and now is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal place of business in said State, and authorized to engage in and en-



gaging in the business of issuing policies of life insurance and kindred [167] kinds of insurance, both in the State of New York and in the State of California.

### III.

That defendant Alleen S. Mildren was formerly the wife of Paul Mildren, the insured named and designated in the five policies of insurance hereinafter mentioned, and is a citizen and resident of the State of California.

That defendants Donald L. Mildren and Paul Mildren, Jr., are the sons of said insured, Paul Mildren, and the aforesaid defendant Alleen S. Mildren and are each citizens and residents of the State of California; that said defendants Donald L. Mildren and Paul Mildren, Jr., are each over sixteen years of age and that each of said defendants has now attained his majority and is twenty-one years of age or more.

### IV.

That Paul Mildren, the insured under each of the five hereinafter mentioned policies of insurance, and sometimes hereinafter referred to as the "insured," died on or about July 21, 1954, in the City of Los Angeles, County of Los Angeles, State of California. That on the dates hereinafter in this paragraph IV set forth plaintiff issued to the said Paul Mildren as the insured plaintiff's policies of insurance numbered and described as follows, to wit:

| Policy No. | Policy Type       | Date          | Original<br>Face Amount |
|------------|-------------------|---------------|-------------------------|
| 3,373,875  | Ordinary Life     | 10/22/24..... | \$ 2,500.00             |
| 3,377,665  | Ordinary Life     | 10/30/24..... | 2,500.00                |
| 3,708,187  | Ordinary Life     | 10/11/26..... | 3,000.00                |
| 5,448,542  | Endowment Annuity | 12/28/38..... | 10,000.00               |
| 5,586,988  | Endowment Annuity | 2/19/40.....  | 3,125.00                |

That by rider dated 2-8-43 described in Endowment Annuity Policy number 5,448,542 said policy was converted into a reduced paid up Annuity Endowment policy in the face amount of [168] \$2,476.00.

That by reason of dividend accruals the face amount of policies numbered, 3,373,875, 3,377,665, 3,708,187 and 5,586,988 has been increased as follows:

| Policy No.      | Increased<br>Face Amount |
|-----------------|--------------------------|
| 3,373,875 ..... | \$ 2,505.78              |
| 3,377,665 ..... | 2,505.78                 |
| 3,708,187 ..... | 3,008.62                 |
| 5,586,988 ..... | 3,138.56                 |

That in and by the terms of said policies and each of them it was agreed that there would be paid to the designated beneficiary named in each of said policies, upon receipt by plaintiff of due proof of the death of the insured (and, in the case of Endowment Annuity policies numbers 5,448,542 and 5,586,988, upon receipt of due proof in respect to each of said two policies that such death occurred prior to the due date of the first Life Income Payment proceeds to be paid under each of said policies on December 28, 1960 and February 19, 1961, respectively), the face amounts payable under each

of said policies, said respective face amounts to be payable in the manner and amounts and upon the terms, provisions and contingencies provided in said respective policies or in Modes of Settlement attached to said policies respectively and forming a part thereof.

#### V.

That the beneficiary originally named in said policy No. 3,373,875 was William Mildren, referred to therein as the father of said insured. That on or about January 10, 1935 said designation of beneficiary was cancelled and said insured directed and provided in effect by Mode of Settlement attached to and forming a part of said policy that, in the event defendant Donald L. Mildren survived said insured and was over sixteen years of age at the date of death of said insured, the proceeds of said policy of insurance should be paid in monthly installments of \$50.00 each, [169] so long as said proceeds should suffice, first to said defendant Donald L. Mildren during his lifetime, then to defendant Paul Mildren, Jr., during his lifetime, then to defendant Alleen S. Mildren during her lifetime, then to the executors or administrators of the last survivor.

#### VI.

That the beneficiary originally named in said Ordinary Life policy of insurance No. 3,377,665 was Jessie Wood, referred to therein as the mother of said insured; that said Jessie Wood is one and the same person as Jessie Mildren, one of the named defendants herein. That on or about October 16,

1939, said designation of beneficiary was cancelled and said insured directed and provided in effect by Mode of Settlement attached to and forming a part of said policy of insurance that, in the event defendant Paul Mildren, Jr., survived said insured and was over sixteen years of age at the date of death of said insured, the proceeds of said policy of insurance should be paid in equal monthly installments for a period of four years certain, first to said defendant Paul Mildren, Jr., during his lifetime, then to defendant Donald L. Mildren during his lifetime, and that following the death of defendant Donald L. Mildren during said four-year period the surrender value of any remaining unpaid installments should be paid to defendant Alleen S. Mildren, if living, otherwise to the executors or administrators of defendant Donald L. Mildren.

## VII.

That the beneficiary originally named in said Ordinary Life policy of insurance No. 3,708,187 was defendant Alleen S. Mildren, referred to therein as the wife of said insured. That on or about January 10, 1935 said designation of beneficiary was cancelled and said insured directed and provided in effect by Mode of Settlement attached to and forming a part of said policy of insurance that in the event defendant Alleen S. Mildren [170] survived said insured, the proceeds of said policy of insurance should be paid to said defendant Alleen S. Mildren in equal monthly installments for twenty

years certain and continuing during her lifetime, and that in the event said defendant Alleen S. Mildren should die prior to the payment of all payments certain, any remaining payments certain should be paid as and when due to such of the insured's children as should then be living, equally, and that at the death of the last survivor of said children, the commuted value of any remaining payments certain should be paid to the executors or administrators of such last survivor.

### VIII.

That the beneficiary originally named in said Endowment Annuity policy of insurance No. 5,448,542 was defendant Alleen S. Mildren, if living, otherwise defendants Donald L. Mildren and Paul Mildren, Jr., share and share alike, or the survivor of them. That on or about February 21, 1939, said designation of beneficiary was cancelled and said insured directed and provided in effect by Mode of Settlement attached to and forming a part of said policy of insurance that in the event defendant Alleen S. Mildren survived said insured, the proceeds of said policy of insurance should be paid to said defendant Alleen S. Mildren in monthly installments of \$50.00 each so long as said proceeds should suffice, during her lifetime, and after her death should be paid to said insured's children, defendants Donald L. Mildren and Paul Mildren, Jr., or to the survivor of them, all upon the contingencies and in the manner more specifically set forth in said Mode of Settlement.



IX.

That the beneficiary originally named in said Endowment Annuity policy of insurance No. 5,586,988 was defendant Alleen S. Mildren, if living, otherwise defendants Donald L. Mildren and Paul Mildren, Jr., equally, share and share alike, or the survivor of them. [171]

X.

That on or about April 8, 1953, in that certain divorce action in the Superior Court of the State of California, in and for the County of San Bernardino, entitled "Alleen S. Mildren, Plaintiff and Cross-Defendant, vs. Paul Mildren, Defendant and Cross-Complainants" and numbered 68261 in the files and records of said court, an interlocutory decree of divorce was made and entered adjudging and decreeing that defendant Alleen S. Mildren was entitled to a divorce from said insured Paul Mildren. That said interlocutory decree provided in relevant part as follows:

"4. That the defendant and cross-complainant be and he is hereby awarded as his sole and separate property the following:

\* \* \*

"(b) Life insurance policies.

\* \* \*

"5. That each of the parties be and they are hereby ordered to deliver to the other any of the real or personal property in the possession of the person or party other than the one to whom the same is herein awarded."

That the final decree of divorce in said divorce action was made and entered on or about April 12, 1954; that said final decree continued in effect the provisions of said interlocutory decree with respect to the division of property between the parties to said divorce action, to wit, defendant Alleen S. Mildren and said insured, and specifically the portions of said interlocutory decree quoted hereinabove in this paragraph X.

### XI.

On December 2, 1953, in said divorce action at the request of Paul Mildren, an order to show cause why Alleen S. Mildren should not be punished for contempt for her failure, among other [172] things, to turn over to Paul Mildren the following described insurance policies was issued by the Superior Court of San Bernardino County:

#397674A1, Lincoln National Life Insurance Company of Fort Wayne, Ind., on life of Donald Lee Mildren,

#399418, Lincoln National Life Insurance Company of Fort Wayne, Ind., on life of Paul Mildren, Jr.,

Five policies, #3373,875—3377,665—3708,187—5448,542—5586,988, in the Mutual Life Insurance Company of New York on life of Paul Mildren Sr.

Said order to show cause was served on Alleen S. Mildren on December 4, 1953, by a deputy of the Sheriff of the County of San Bernardino.

XII.

A certified copy of the said interlocutory decree in said divorce action was served on Alleen S. Mildren by the Sheriff's office of San Bernardino County on December 23, 1953.

XIII.

On January 13, 1954, in said divorce action at the request of Paul Mildren, the Court issued an order to show cause why Alleen S. Mildren should not be punished for contempt for her failure to turn over to Paul Mildren the following described life insurance policies:

#397674A1, Lincoln National Life Insurance Company of Fort Wayne, Ind., on life of Donald Lee Mildren,

#399418, Lincoln National Life Insurance Company of Fort Wayne, Ind., on life of Paul Mildren, Jr.,

Five policies, #3373,875—3377,665—3708,187—5448,542—5586,988, in the Mutual Life Insurance Company of New York on life of Paul Mildren, Sr.

Said order to show cause issued on January 13, 1954, was served by the Sheriff's office of San Bernardino County on Alleen [173] S. Mildren on January 14, 1954.

XIV.

A trial was held before said Superior Court on January 25, and 26, 1954, at which time some four

separate matters were heard by the Court. These included:

1. An action brought in claim and delivery by Alleen S. Mildren against Paul Mildren and Jessie Mildren to recover certain personal property, said to have been converted by Paul Mildren and Jessie Mildren to their own use, which resulted in a judgment in favor of the defendants.

2. An action for forcible detainer for waste and for value of use and occupation of premises brought by Alleen S. Mildren against Paul Mildren and Jessie Mildren, which resulted in a judgment in favor of the defendants.

3. An action to enjoin and restrain the Sheriff of San Bernardino County from proceeding to sell certain property of the plaintiff Alleen S. Mildren, which had been levied upon by the Sheriff in an attempt to enforce the provisions of the judgment referred to hereinabove, wherein and whereby the defendant Paul Mildren was awarded cash in the sum of \$7800.00. A judgment in favor of the defendant in that action followed.

4. A proceeding in contempt based on the order to show cause hereinabove set forth and which resulted in the issuance of an order in action No. 68261 as follows:

“Plaintiff is guilty of contempt because of her failure to deliver possession of the following described insurance policies to defendant and plaintiff

is hereby ordered to deliver the following described policies to defendant as his sole and separate property or in the alternative to deliver them to the Clerk of the above-entitled court to be held until this order becomes final either by lapse of time or on decision on appeal:

“#39767A1, Lincoln National Life Insurance Company of [174] Fort Wayne, Ind., on life of Donald Lee Mildren,

“#399418, Lincoln National Life Insurance Company of Fort Wayne, Ind., on life of Paul Mildren, Jr.,

“Five policies, #3373,875, 3377,665, 3708,187, 5448,542, 5586,988, in The Mutual Life Insurance Company of New York on life of Paul Mildren, Sr.

Upon the delivery of said policies to defendant, plaintiff will be purged of her contempt.”

No service of said order was ever made upon the said Alleen S. Mildren.

XV.

The Findings of Fact signed and filed in connection with the trial of said order to show cause on May 7, 1954, by the Superior Court of the State of California, in and for the County of San Bernardino, in the said divorce action found among other things:



“Plaintiff (Alleen S. Mildren) has in her possession the following described life insurance policies which were awarded to defendant (Paul Mildren) in the interlocutory judgment of divorce rendered herein and which now belong solely and exclusively to the defendant (Paul Mildren) and to which he is entitled to possession:

“#397674A1, Lincoln National Life Insurance Company of Fort Wayne, Ind., on life of Donald Lee Mildren,

“#399418, Lincoln National Life Insurance Company of Fort Wayne, Ind., on life of Paul Mildren, Jr.,

“Five policies, #3373,875—3377,665—3708,-187—5448,542—5586,988 in The Mutual Life Insurance Company of New York on life of Paul Mildren, Sr.”

All of the judgments, decrees and orders referred to in said divorce action have become final and none of them have ever been appealed, vacated or modified in any way. [175]

#### XVI.

On or about April 12, 1954, Robert McWilliams as attorney for the said Paul Mildren, wrote and delivered through the United States mail to Attorney Taylor F. Peterson a letter in the following words:

“Dear Mr. Peterson:

“As I understand your last letter, the only part of the decision made by Judge Curtis which you are

contesting is the one with reference to the unlawful detainer action.

“I assume, therefore, that you will be willing to turn over the life insurance policies to me for Dr. Mildren.

“If I am correct, please let me know how you want to handle this, if you want to mail them to me or just how you want them delivered.

“Very truly yours,”

The said Attorney Taylor F. Peterson on or about April 19, 1954, wrote and delivered through the mail to the said Robert McWilliams a letter as follows:

“Dear Mr. McWilliams:

“This will acknowledge receipt of your letter dated April 12, 1954.

“I do not have the life insurance policies in my possession. Mrs. Mildren has, and she has not as yet given me instructions as to what she wished me to do. After judgment has been entered and Notice of Entry of Judgment is sent me, it will probably be necessary for me to consult with her again to see whether she desires to file Notice of Intention to move for a new trial, or to appeal or whether she intends to comply with the order.

“With regard to the matter of the personal [176] property, I instructed Mrs. Mildren to have it delivered to the Fontana Van & Storage Company, trailer included, and for Fontana Van & Storage Company, in turn, to notify you or Dr. Mildren

when the property had been received by them. This will, I think, take care of this situation.

“Thank you for your courtesy in this matter, I am

“Very truly yours,”

#### XVII.

On or about June 17, 1953, the said Paul Mildren executed and delivered to The Mutual Life Insurance Company of New York written requests for change of beneficiaries, requesting that the beneficiaries on all policies involved in this suit be changed to Jessie Mildren as the mother of the insured.

#### XVIII.

That each of said policies of insurance contained a rider or other provision providing in effect, among other things, that the right to change the beneficiary thereunder was reserved solely to the insured, to the exclusion of the beneficiary, and that any change of beneficiary thereunder should be effective only upon endorsement of the same on such policy of insurance by plaintiff. That the aforesaid changes of beneficiary referred to hereinabove in paragraphs V through IX, inclusive, are each properly endorsed on the respective policies of insurance in said paragraphs V through IX described, but that the change of beneficiary referred to in Paragraph XVII hereinabove has never been endorsed on any of said policies of insurance by reason of said insured's failure to submit said pol-

icies to plaintiff whether at the time of requesting said change of beneficiary, or otherwise, for the purpose of permitting plaintiff to endorse said change of beneficiary thereon; that said insured's failure to submit said policies of insurance for endorsement of said last mentioned change of beneficiary was due to the fact that said policies of insurance were not at the [177] time of such requested change in the possession or under the control of said insured, but were in the possession of and under the control of defendant Alleen S. Mildren and were wrongfully and in violation of the said interlocutory decree, final divorce decree, and court order described in paragraphs X to XV inclusive of these findings withheld from said insured by said defendant, Alleen S. Mildren.

### XIX.

The aforesaid interlocutory and final decrees of divorce and the said court order set forth in paragraphs X through XV herein were valid and effective to constitute said insured the sole owner of said five policies of insurance as his separate property; the aforesaid change of beneficiary referred to in paragraph XVII hereinabove was valid and effective to change the beneficiary under each of said policies of insurance, and that accordingly said defendant, Jessie Mildren, is the sole beneficiary under said five policies of insurance and each of them and is entitled to receive payment of the entire proceeds thereof; that said defendant, Jessie Mildren has demanded payment to her by plaintiff of the entire

proceeds payable under each of said policies of insurance.

## XX.

The said deceased, Paul Mildren, was at all times mentioned in the complaint in this action of sound mind and not acting under any duress or undue influence and was at all of said times mentally competent to perform all acts which it was alleged he performed.

## XXI.

Pursuant to stipulation of all parties hereto, it is found that the reasonable value of all the services rendered by the attorneys for plaintiff in this action is the sum of \$750.00 and that plaintiff has expended in connection with this action the sum of \$19.50 as taxable costs herein. That the aggregate amount of attorney's [178] fees and costs total the sum of \$769.50 and should be deducted from the proceeds of the said policies of insurance and paid to the attorneys for plaintiff from and out of the aforesaid monies deposited by plaintiff into the registry of this court.

## XXII.

Except as otherwise expressly found, all of the allegations contained in the plaintiff's complaint and in the cross-complaint of Jessie Mildren are true and except as otherwise expressly found, all the allegations contained in the cross-complaints of Alleen S. Mildren and Donald L. Mildren and in the answers of Alleen S. Mildren and Donald L. Mildren



to the plaintiff's complaint and to Jessie Mildren's cross-complaint are false.

### Conclusions of Law

From the foregoing facts the court makes the following conclusions of law:

#### I.

That the Clerk should be ordered to pay to cross-complainant, Jessie Mildren, the balance of the money which was paid into the registry of this court by plaintiff or the net amount of \$12,865.24, which net amount constitutes the sum remaining in the hands of the Clerk of this court after the payment of the sum of \$769.50 pursuant to order discharging plaintiff and for payment of attorney's fees and costs heretofore on January 7, 1955, made and entered herein.

#### II.

That plaintiff should be released and discharged of and from any and all obligations or liability under or arising out of or with respect to all the policies of insurance involved in this action or any of the or any provision contained in any of them.

#### III.

Pursuant to the stipulation of the parties and the terms of the order discharging plaintiff and for payment of attorneys' [179] fees and costs heretofore on January 7, 1955, made and entered herein, under the terms of which said order said five insurance

policies were cancelled and declared to be of no further force and effect as more specifically set forth in said order, the Clerk of this court should be ordered to deliver all five of said insurance policies which were introduced into evidence as cross-complainant's Exhibit "A" to Messrs. Newlin, Holley, Tackabury & Johnston, attorneys for plaintiff in the above-entitled action, such policies each to be marked cancelled by plaintiff in confirmation of the cancellation thereof pursuant to the aforesaid order discharging plaintiff and for payment of attorney's fees and costs therein entered on January 7, 1955, as aforesaid.

#### IV.

That the defendants and each of them, their agents, attorneys, representatives and all persons claiming by, through or under them, or any of them, should be perpetually enjoined and restrained from instituting or prosecuting any suit or proceeding or any action or actions in any state court or in any other federal court, or in any other court of law or equity against plaintiff or any other defendant herein on account of said policies of life insurance numbered 3373875, 3377665, 3708187, 5448542, and 5586988 issued on the life of Paul Mildren or the money payable thereunder.

Dated: November 29th, 1955.

/s/ WM. M. BYRNE,  
Judge. [180]

The foregoing findings of fact and conclusions of law are approved as to form pursuant to local Rule 7.

NEWLIN, HOLLEY, TACKA-  
BURY & JOHNSTON,

By /s/ GEORGE W. TACKABURY,  
Attorneys for Plaintiff.

/s/ ROBERT McWILLIAMS,  
Attorney for Defendant  
Jessie Mildren.

/s/ TAYLOR F. PETERSON,  
Attorney for Defendants Alleen S. Mildren and  
Donald L. Mildren.

WOOD, CRUMP, ROGERS,  
ARNDT & EVANS,

By /s/ A. M. ROGERS, JR.,  
Attorneys for Defendant  
Paul Mildren, Jr.

[Endorsed]: Filed November 29, 1955. [181]

United States District Court, Southern District  
of California, Central Division

Civil Action No. 17253-WB

THE MUTUAL LIFE INSURANCE COMPANY  
OF NEW YORK, a Corporation,

Plaintiff,

vs.

ALLEEN S. MILDREN, et al,

Defendants.

JESSIE MILDREN,

Cross-Complainant,

vs.

ALLEEN S. MILDREN, DONALD L. MIL-  
DREN, PAUL MILDREN, JR., et al.,

Cross-Defendants.

JUDGMENT IN FAVOR OF CROSS-  
COMPLAINANT JESSIE MILDREN

Plaintiff having paid into the registry of this Court the sum of \$13,634.74, which is the total fund in controversy and said sum being still on deposit in said registry and plaintiff having been discharged by order of this Court entered pursuant to stipulation of all parties, and a pre-trial order having been signed by Robert McWilliams as attorney for cross-complainant Jessie Mildren; by Taylor F. Peterson as attorney for cross-complainants Alleen S. Mildren and Donald L. Mildren; and by Wood, Crump, Rogers, Arndt & [182] Evans by A. M. Rogers, Jr.,

as attorneys for defendant Paul Mildren, Jr., and filed herein whereby certain stipulations of fact, stated therein, were agreed upon and the case being called for trial on May 31, 1955, at the hour of 9:45 a.m., in courtroom 4 before William M. Byrne, judge presiding, sitting without a jury, a jury having been expressly waived, and Robert McWilliams appearing as attorney for cross-complainant Jessie Mildren and Taylor F. Peterson appearing as attorney for cross-complainants Alleen S. Mildren and Donald L. Mildren and Wood, Crump, Rogers, Arndt & Evans by A. M. Rogers, Jr., appearing as attorneys for defendant Paul Mildren, Jr., and cross-complainants Jessie Mildren, Alleen S. Mildren and Donald L. Mildren being present in Court and evidence both oral and documentary having been introduced on behalf of cross-complainants Jessie Mildren, Alleen S. Mildren and Donald L. Mildren, and the Court having considered the same and having received and read briefs by counsel for cross-complainants Jessie Mildren, Alleen S. Mildren and Donald L. Mildren and being fully advised, and the Court having heretofore made and caused to be filed its written findings of fact and conclusions of law,

It Is Ordered, Adjudged and Decreed: .

I.

That the Clerk is hereby ordered to pay to cross-complainant Jessie Mildren the balance of the money which was paid into the registry of this Court by plaintiff or net amount of \$12,865.24, which



net amount constitutes the sum remaining in the hands of the Clerk of this Court after the payment of the sum of \$769.50 pursuant to order discharging plaintiff and for payment of attorneys' fees and costs heretofore on January 7, 1955, made and entered herein.

## II.

That plaintiff is hereby released and discharged of and from any and all obligations or liability under or arising out of [183] or with respect to all the policies of insurance involved in this action or any of them or any provision contained in any of them.

## III.

Pursuant to the stipulation of the parties and the terms of the order discharging plaintiff and for payment of attorneys' fees and costs heretofore on January 7, 1955, made and entered herein, under the terms of which said order said five insurance policies were cancelled and declared to be of no further force and effect as more specifically set forth in said order, the Clerk of this Court is hereby ordered to deliver all five of said insurance policies which were introduced into evidence as cross-complainant's Exhibit "A" to Messrs. Newlin, Holley, Tackabury & Johnston, attorneys for plaintiff in the above-entitled action, such policies each to be marked cancelled by plaintiff in confirmation of the cancellation thereof pursuant to the aforesaid order discharging plaintiff and for payment of attorneys' fees and costs therein entered on January 7, 1955, as aforesaid.

IV.

That the defendants and each of them, their agents, attorneys, representatives and all persons claiming by, through or under them, or any of them, are perpetually enjoined and restrained from instituting or prosecuting any suit or proceeding or any action or actions in any state Court or in any other federal Court, or in any other Court of law or equity against plaintiff or any other defendant herein on account of said policies of life insurance numbered 3,373,875, 3,377,665, 3,708,187, 5,448,542, and 5,586,988 issued on the life of Paul Mildren or the money payable thereunder.

Dated: November 29, 1955.

/s/ WM. M. BYRNE,  
Judge. [184]

The foregoing judgment is approved as to form in accordance with local Rule 7.

NEWLIN, HOLLEY, TACKA-  
BURY & JOHNSTON,

By /s/ ROBERT H. INGRAHAM,  
Attorneys for Plaintiff.

ROBERT McWILLIAMS,  
Attorney for Defendant  
Jessie Mildren.

/s/ TAYLOR F. PETERSON,  
Attorney for Defendants Alleen S. Mildren and  
Donald L. Mildren.

WOOD, CRUMP, ROGERS,  
ARNDT & EVANS,

By /s/ A. M. ROGERS, JR.,  
Attorneys for Defendant  
Paul Mildren, Jr.

Receipt of copy acknowledged.

[Endorsed]: Filed November 29, 1955.

Judgment docketed and entered November 30,  
1955. [185]

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[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Notice is hereby given that Alleen S. Mildren and Donald Lee Mildren defendants and cross-defendants above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on November 30, 1955.

December 23, 1955.

/s/ TAYLOR F. PETERSON,  
Attorney for Appellants, Alleen S. Mildren and  
Donald Lee Mildren.

[Endorsed]: Filed December 27, 1955. [186]

In the United States District Court, Southern District of California, Central Division  
Civil Action No. 17253-WB

THE MUTUAL LIFE INSURANCE COMPANY  
OF NEW YORK, a Corporation,  
Plaintiff,

vs.

ALLEEN S. MILDREN, DONALD L. MILDREN,  
PAUL MILDREN, JR., JESSIE MILDREN,  
et al.,

Defendants.

JESSIE MILDREN,

Cross-Complainant,

vs.

ALLEEN S. MILDREN, DONALD L. MILDREN  
and PAUL MILDREN, Jr.,

Cross-Defendants.

Honorable Wm. M. Byrne, Judge, Presiding.

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Appearances:

For the Plaintiff:

NEWLIN, HOLLEY, TACKABURY &  
JOHNSTON, By  
GEORGE W. TACKABURY.

For Defendant and Cross-Complainant Jessie  
Mildren:

ROBERT McWILLIAMS.

For Defendants and Cross-Defendants Alleen S. Mildren and Donald L. Mildren:

TAYLOR F. PETERSON.

For Defendant and Cross-Defendant Paul Anthony Mildren (Sued herein and sometimes known as Paul Mildren, Jr):

WOOD, CRUMP, ROGERS, ARNDT & EVANS and

A. M. ROGERS, JR.

Tuesday, May 31, 1955—9:45 A.M.

The Court: The clerk will call the calendar.

The Clerk: No. 17253 WB, Civil, The Mutual Life Insurance Company of New York versus Alleen S. Mildren, et al., for trial.

Mr. McWilliams: Ready, your Honor.

Mr. Peterson: Ready for the defendants, Alleen S. Mildren and Donald Lee Mildren.

The Court: Who do you represent?

Mr. McWilliams: I represent Jessie Mildren, your Honor.

The Court: Where is counsel for the cross-defendant Paul Mildren?

Mr. Rogers: I am here, if your Honor please, Mr. Rogers.

The Court: All right. You may proceed.

Mr. Peterson: I will call Mrs. Alleen Mildren.



ALLEEN S. MILDREN

one of the cross-defendants herein, called as a witness on behalf of the cross-defendants, being first duly sworn, testified as follows:

The Clerk: Give me your full name, please.

The Witness: Alleen S. Mildren. [4\*]

Direct Examination

By Mr. Peterson:

Q. Mrs. Mildren, you are one of the defendants in this action? A. I am, sir.

Q. And Paul Mildren, Sr., was your husband?

A. Yes, sir.

Q. And he died, I believe, last July, is that correct? A. Yes, sir.

Q. Now, when did you marry Paul Mildren, Sr.?

A. July 23, 1926.

Q. And were there any children born as a result of that marriage? A. Yes, sir.

Q. And their names and present ages?

A. Paul Anthony Mildren, born September 21, 1928; Donald Lee Mildren, born October 31, 1932.

Q. During the time that you and your husband were married, were there any life insurance policies obtained? A. Yes, sir.

Q. Were there other policies, in addition to those that are involved in this proceedings?

A. Personal or otherwise?

Q. I am speaking now of life insurance policies.

A. No. [5]

(Testimony of Alleen S. Mildren.)

Q. Upon the lives of either you or your husband?

A. Yes. There is one other.

Q. Will you tell the court what that policy is, and, if you know, where it is at the present time?

Mr. Rogers: I object to the question on the grounds it is incompetent, irrelevant and immaterial.

The Court: What is the purpose of this, counsel?

Mr. Peterson: I think it goes to the question of the definiteness of the judgment that was rendered in the Superior Court in the divorce action, your Honor.

The Court: What is it you are attempting to prove?

Mr. Peterson: That there were other policies or, at least, another policy in addition to those.

The Court: Another policy on the life of the deceased?

Mr. Peterson: On the decedent, yes.

The Court: The objection is overruled.

Mr. Peterson: My question was, what was that policy and upon whose life and in whose favor?

A. There was one each on the boys and another insurance company, and my husband was the beneficiary for one and me for the other.

Q. Well, was there any other policy, other than the five that are involved that pertain to this case? That is my question.

A. Yes, sir. **There was another Mutual Life. [6]**

Q. That is the same insurance company that is the plaintiff in this action? A. Yes, sir.

(Testimony of Alleen S. Mildren.)

Q. Upon whose life was that policy?

A. My husband's.

Q. And who is named in it as the beneficiary?

A. I am.

Q. And do you know what became of that policy?

A. Yes, I have it. I can't state it just correctly because I haven't studied the policy, but it is Paul, Jr., and it is a life insurance.

Q. And by Paul, Jr., do you mean he is the beneficiary?

A. No. I am the beneficiary but not until his death.

Q. But not until the death——

A. Of Paul, Jr.

Q. Of Paul, Jr.?           A. Yes.

Q. And that policy is in addition to the five that are being here sued upon?           A. Yes.

Q. What is the face value of that policy?

A. Oh, I can't just tell you offhand, Mr. Peterson.

Q. Do you know upon what date that policy, to which you have just referred, was issued?

A. Way back, years ago. [7]

Mr. McWilliams: To which I object, your Honor, on the ground that the policy itself is the best evidence.

The Court: Sustained.

Q. (By Mr. Peterson): Now, I call your attention to a date in the month of January, 1948. Did you and your husband sign and execute a document at that time relating to your property rights?

(Testimony of Alleen S. Mildren.)

A. Yes, sir.

Q. Mrs. Mildren, I show you a photostatic certified copy of a document marked "Agreement," of January 28, 1948, and ask you whether or not that was the document that was executed by you and your husband at that date?

Mr. McWilliams: Your Honor, I object to the introduction of this particular document, on the ground that it is immaterial, because it has already been adjudicated in an action in San Bernardino County, the pretrial order outlined various proceedings involved, and I don't think it is at all material because it has been the object of prior adjudication in San Bernardino County, in the Superior Court.

Mr. Peterson: If I may be heard upon that matter, your Honor?

The Court: In what way, why would it not be material in this matter? My recollection of the pretrial order is that it is referred to in the pretrial order. Isn't it?

Mr. McWilliams: It is referred to in the pretrial [8] order.

The Court: Is a copy of it attached to the pretrial order?

Mr. McWilliams: No. It is not. There is no copy of it attached to the pretrial order, but it is referred to in the pretrial order.

The Court: Then, it is very material.

Mr. McWilliams: Well, I don't feel that it is material, because I think that any question of in-

(Testimony of Alleen S. Mildren.)

terpretation of this document or the effect of the document has already been taken care of in a pre-divorce action in San Bernardino, and, therefore, this document isn't of any effect here, but we have to depend upon the decree rather than the document which was adjudicated in that decree.

The Court: Well, that is another question entirely. You are not taking the position that because there was a property settlement entered into in San Bernardino that it is immaterial to the issues in this case, are you?

Mr. McWilliams: Yes, I am.

The Court: You refer to it in your pretrial order. It is referred to in your pretrial order.

Mr. McWilliams: Well, your Honor, in making up a pretrial order, it is impossible for counsel to agree on what is material and what is immaterial.

The Court: Well, the objection is overruled. Of course, [9] you understand as far as your statement as to the effect of it, I am not saying you are wrong on that, I am not ruling on that at the present time. I am just saying that your objection to its immateriality is overruled.

Mr. Peterson: Mr. Reporter, will you read the question, please?

(Pending question read by the reporter.)

A. Yes, that is.

Mr. Peterson: I offer it in evidence as Defendant Alleen Mildren's first exhibit.



(Testimony of Alleen S. Mildren.)

The Court: It will be received.

The Clerk: Cross-defendants' Exhibit A received in evidence.

(The document referred to was marked Cross-Defendants' Exhibit A and received into evidence.)

Q. (By Mr. Peterson): Now, Mrs. Mildren, at the same time that this document was issued, you may state whether or not the insurance policies that are here involved were in and upon the real property which was then 348 North Mango Street, in Fontana?

Mr. McWilliams: To which I object on the ground that this question of the ownership of the policies has been adjudicated, it is *res adjudicata*, and whether these policies were on the premises or not is immaterial.

Mr. Rogers: I further object to the question on the [10] ground it is leading and suggestive.

The Court: Now, you have set out here in your pretrial order, which counsel for all parties have signed, as an issue of fact to be tried in this case:

“Whether or not the life insurance policies, which are the subject of the present action, were included in the personal property in the house at 346 North Mango Street, Fontana, California, at the time and place when and where the property settlement agreement was entered into.

“Whether or not the life insurance policies which are the subject of the present action were delivered

(Testimony of Alleen S. Mildren.)

by Paul Mildren, deceased, to Alleen S. Mildren contemporaneously with the execution and delivery of a certain written agreement, dated January 28, 1948, and formed a part of the same transaction.”

Now, what is the basis of your objection?

Mr. McWilliams: Well, your Honor, possibly I am wasting time, although I hope not, and possibly I don't understand this pretrial procedure, but, counsel in making up this pretrial order felt that it was a part of it and material. I didn't think it was. There was no opportunity to have the court rule on whether it was or not, so it was impossible to make up a pretrial order unless we put it in as an issue to try. [11]

The Court: Counsel, why do you say there wasn't an opportunity for the court to rule on it? Of course, I would not rule on it when you come in here and agree on it. In other words, regarding these facts which you have outlined in the first portion of the pretrial order, you stipulate and agree to the existence of those facts, and state they require no proof.

Then, you state that the issues of fact which are to be tried are such and so, and you set forth these issues of fact. Now, if you have agreed between yourselves that these are issues of fact to be tried, how can you come in now and say that it is immaterial, or how can you come in and say, “We have never had an opportunity to have that presented to the court”?

Now, if, as an illustration, he contended that it

(Testimony of Alleen S. Mildren.)

was an issue of fact in this case and you contended it was not an issue of fact in this case, then, of course, the issue would be whether or not it was an issue of fact in this case, that would be the thing that would be left for me to rule on.

But, when you say it is an issue of fact and state, agree in here that it is an issue of fact in the case, and now you object to it because of its immateriality——

Mr. McWilliams: Well, then, I didn't understand that that was the effect of the pretrial order. I understood that they were the contentions that were made but it was left for [12] the trial court to rule on whether or not those contentions were material.

The Court: Now, I don't understand, counsel, how you could say that. The memorandum which you filed, it is true, includes your contentions. You each filed your memorandum. The other party had nothing to do with that, no other counsel except you, because those are your own contentions. In that memorandum you set forth what your contentions are and he sets forth what his contentions are, with respect to the issues that are to be tried. But this pretrial order, of course, sets forth those matters that you agree upon, because you both signed it. It is signed by both before it is ever submitted to me.

Mr. McWilliams: I remember, but you sent us back two or three times to try to agree and I thought that was the effect——

The Court: Counsel, I can't remember that par-

(Testimony of Alleen S. Mildren.)

ticularly, but if I sent it back to you two or three times, then I know you have no excuse, because it is true there are times when counsel have difficulty understanding these things and I make it very clear to them. Sometimes, for instance, counsel on one side will come in and contend that a certain matter is in issue and counsel on the other side thinks that it is not an issue in the case and, of course, I repeat, and I am sure if that question was before me I repeated it, that you, of course, [13] would not put anything down as an issue if you do not agree that it is an issue. But, if counsel on the other side contends that it is an issue and you contend it is not an issue, that is the issue, that is, whether or not it is in issue is an issue. It might sound confusing, but, it should be very clear to an attorney.

If one person says the fact that the sun was shining that day, if it was a fact, is an issue in this case and if you contend that that is not an issue in the case, that it is immaterial whether the sun was shining or not, then you say it is immaterial and he says it is material, he says it is an issue, and so, of course, the issue is what I must decide, so I must decide whether or not it was material that the sun was shining that day. Of course, there is no great difficulty about that, because if you are satisfied that it is material or was not material, and he is satisfied that it is, all you need to put down as an issue is, is it a material issue in this case whether the sun was shining on such and such a date? That is one of the things that I must decide.



(Testimony of Alleen S. Mildren.)

Mr. McWilliams: Yes.

The Court: Then you would put down as an issue in this case whether or not the sun was shining. That is all there is to it. That is the issue, and you agree upon it.

Mr. McWilliams: In this particular case I believe that is covered under the "Issues of Law" that are set forth here. [14] I think they take care of the question as to whether or not these matters are material or whether they have already been decided.

The Court: All right. Then, if the issues of law take care of it, all right, but I am trying this case on the pretrial order. This case is tried on the pretrial order. So, of course, I must try this case by taking the issues which you have set out. The attorneys are familiar with the case, they are familiar with the facts and familiar with the issues.

The purpose of the pretrial order is so you can acquaint the judge with those, so when you try the case and you are presenting an objection to the materiality of something, if I don't know where it fits into the picture, I look to the pretrial order and when I look to the pretrial order I have what you agree are the issues involved, and you have agreed that that is an issue here.

When this case is over it may be that I will decide that you folks were in error when you stated that it was an issue whether the sun was shining on a particular day, or whatever it may be, and I may decide that you folks are wrong because it is imma-



(Testimony of Alleen S. Mildren.)

terial and not consider it in the decision of this case, but when I am trying the case I can't say to counsel, "The thing that you both agree as an issue here is not an issue," because you know all about the case and I don't. You [15] have talked to all these witnesses. I am going to learn it from the stand here as the evidence develops.

Mr. McWilliams: Well, I am not sure. I misunderstood what we were supposed to do, and I am afraid it is going to waste a lot of time.

The Court: Well, to me, that is no excuse, if the work was properly done. That is the reason why we have a pretrial order, so that counsel can agree upon those things that it is possible for them to agree upon, and I assumed that is what you folks had done here.

Well, you may proceed. Objection overruled. You may answer the question.

Read the question.

(Pending question read by the reporter.)

Mr. Peterson: May I withdraw the question and restate it? There are two inaccuracies in it and I would like to correct them.

The Court: All right.

Q. (By Mr. Peterson): Will you state whether or not the insurance policies which are the subject of this action——

The Court: If you are going to restate the question, then you can put it so as to eliminate any lead-

(Testimony of Alleen S. Mildren.)

ing question as to where the policies were, if she knew, at that time.

Q. (By Mr. Peterson): Do you know where the policies, which are the subject of this action, were at the time that [16] that document was executed?

A. Only that he said that his mother had them and that he would bring them to me as soon as he came out again.

Q. And did he, in fact, bring them to you?

A. Yes, sir, he did.

Q. When was it with reference to the time that the document, which has been marked as Exhibit No. A, was signed? A. Within two weeks.

Q. Let us go back a little bit. Had Dr. Mildren been living at home, at 346 North Mango Street, with you for some time prior to this agreement of January 28, 1948? A. No. Just on week ends.

Q. Where had he been living for the year or two previous to that? A. In Los Angeles.

Q. And with whom? A. His mother.

Q. When he came out and brought you these policies, in what form did he bring them to you, were they in packages, that is what I am getting at?

A. They were in a big, heavy paper shopping bag.

Q. Who was present in your home at the time that he brought them to you?

A. My son, Donnie.

Q. What did you then do with the policies? [17]

A. Well, it was on a Friday night, oh, around 8:00 o'clock, and I wasn't worried about them and

(Testimony of Alleen S. Mildren.)

they just stayed in the living room until Monday morning.

Q. Then, on Monday morning, what did you do with them?

A. We, he and I took them over to a neighbor's to keep.

Q. What was the name of the neighbor?

A. Mrs. Maycock.

Q. And where does she live with reference to where you were living at that time?

A. Oh, a couple of miles.

Q. Was it still within the Fontana area?

A. Oh, yes, sir.

Q. Did your husband go over with you to Mrs. Maycock's house at the time you took the policies over there?

A. He drove the car over, yes, sir.

Q. What was your purpose in leaving them with Mrs. Maycock at that time?

A. He had a ticket for me to go to San Francisco to see my oldest boy, and I wouldn't have had the time to take them into the bank at San Bernardino and put the policies away, and he made that reservation that he had made for me in Los Angeles, out of Los Angeles.

Q. Did you, in fact, go to San Francisco on [18] that occasion?

A. Yes, I did.

Q. How long were you gone?

A. Five or six days. I don't just remember.

Q. Then, when you came back, what did you do with reference to the policies?

(Testimony of Alleen S. Mildren.)

A. I went over and got them and put them in the vault at San Bernardino.

Q. At the time that your husband brought these policies to you following the execution of this agreement, did he say anything about them?

A. Well, it was always understood——

Mr. Peterson: No. That isn't my question.

A. Yes, sir, he said, "This is your Social Security." That is the way he spoke of it, as my Social Security and the best.

Q. And what did he physically do with the bag in which these policies were contained at that time?

A. Well, he brought them into the house. He had some other things in the bag, and a great big heart-box of candy. He took the candy out and he just left the policies right in the bag, right in the living room.

Q. And they remained there in the same place until you took them over to Mrs. Maycock's, is that right?

A. Yes, sir. [19]

Q. What was the source of the funds that were used to pay the premiums upon those policies?

A. Money that I had worked in the office for.

Q. Well, was your husband working at the same time?

A. We both worked in his office, yes, sir.

Q. What was his occupation?

A. Physician and surgeon.

Q. Was he a medical doctor or what?

A. An osteopathic physician and surgeon.

Q. Where did he have his offices at the time these policies were executed?

(Testimony of Alleen S. Mildren.)

A. First at 5401-10th Avenue, that is a corner property, and later he built at 3210 West 54th, which is adjoining the residence.

Q. When was it that you moved to Fontana?

A. On February 13, 1942.

Q. And you have lived there ever since?

A. Yes, sir.

Q. Does your son, Donald Mildren, live there with you at the present time?           A. He does.

Q. Now, going back to the time that the agreement, cross-defendants' Exhibit No. A, was executed, was there anything said between your husband and yourself at that time in regard to these policies? [20]           A. Yes. He said that——

Q. All right, let us find out who was present there at the time, if anyone else.

A. Well, Donnie was in the living room when he brought them in that night.

Q. No, but I am going back to the time the agreement itself was executed.

A. Oh, yes, over at the attorney's office.

Q. And what attorney was that?

A. Attorney Reid in Riverside.

Q. Is that Mr. Enos Reid?           A. Yes, sir.

Q. And what was said at that time regarding the policies?

Mr. McWilliams: To which I object on the ground it is hearsay as to my client, Jessie Mildren.

The Court: Objection sustained.

Q. (By Mr. Peterson): Since the date upon



(Testimony of Alleen S. Mildren.)

which you took the policies back from Mrs. Maycock, in whose possession have they been?

A. Mine.

Mr. Peterson: I have no further questions at this time. [21]

### Cross-Examination

By Mr. McWilliams:

Q. Mrs. Mildren, you mentioned another policy that I understood was in the Mutual Life Insurance Company of New York, in addition to the five that are mentioned in this action? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Do you have that policy here with you?

A. No, sir.

Q. You say that you were the first beneficiary on that policy, or was Paul the first beneficiary?

A. That is in the vault?

Q. Well, the other policy that is not mentioned in this action?

A. I couldn't tell you to remember correctly, Mr. McWilliams.

Q. In other words, you don't recall whether you were the first beneficiary and then Paul was the second beneficiary or Donald was the first beneficiary?

A. Not to be correct, I couldn't say.

Q. Have you collected on that policy?

A. No, sir.

Q. Do you still have that policy in your possession? [22] A. Yes, sir.

(Testimony of Alleen S. Mildren.)

Q. Do you know the number of the policy?

A. No, sir.

The Court: Excuse me. I am not sure that I understand that. Do I understand that was the policy on the life of your former husband?

The Witness: Your Honor, I——

The Court: Just answer my question.

The Witness: Yes, sir—no, sir. If Paul, Jr., goes, it comes to me.

The Court: Can you just answer my question? Was it on the life of your former husband?

The Witness: No; no, sir.

The Court: All right, you may proceed.

Counsel, I asked you when you went into this question whether that is what you were interrogating her on.

Mr. Peterson: That was my understanding.

The Court: But you are talking about the policy on someone else that has no connection to the decedent at all. You should have told me that.

Mr. Peterson: My understanding was otherwise. I learned it just in the last few days and didn't have a chance to put it in our pretrial memorandum. I may be able to clear it up, however.

The Court: If it is a policy on the life of her son, [23] then, of course, it is immaterial. That is why I asked the question. He made an objection to it on the ground it is immaterial and obviously it is immaterial, if you are talking about a policy on the life of her son.

(Testimony of Alleen S. Mildren.)

Mr. Rogers: I move that all testimony in reference to that policy be stricken.

The Court: Granted. It may go out.

Q. (By Mr. McWilliams): Mrs. Mildren, do you have the five life insurance policies that are the subject of this action here today? A. Yes, sir.

Q. May I see them, please?

May I approach the witness?

The Court: Yes.

(The witness produces documents.)

Mr. McWilliams: At this time, your Honor, I would like to offer into evidence the five life insurance policies which are the subject of this action and which are described in the pleadings and in the pretrial memorandum.

The Court: Very well. They will be admitted in evidence as one exhibit.

Mr. McWilliams: As one exhibit, your Honor, yes.

Mr. Rogers: For the purpose of the record, could they be identified by policy numbers, or is that necessary?

The Court: Well, if they are all one exhibit, it isn't [24] necessary, although if you wish you can identify them.

Mr. Rogers: By the policy numbers.

The Court: You may read them off, if you care to, just take the policies and read from them, and identify them if you wish.

Mr. Rogers: Counsel has already checked them as against his notes. Is that correct?

(Testimony of Alleen S. Mildren.)

Mr. McWilliams: That is correct. There are five policies in the Mutual Life Insurance Company of New York, on the life of Paul Mildren, Sr., which are described upon page 2, lines 25, 26 and 27, of the pretrial order.

The Court: Very well. They will be received.

The Clerk: Cross-complaint's Exhibit No. 1.

(The documents referred to as Cross-Complainant's Exhibit No. 1 were received in evidence.)

The Court: As Cross-Complainant Jessie Mildren's Exhibit No. 1.

Mr. McWilliams: That is all, your Honor.

The Court: Any questions, Mr. Rogers?

Mr. Rogers: No questions.

The Court: You may step down.

(Witness excused.) [25]

### MELBOURNE S. HAMILTON

called as a witness herein on behalf of the cross-defendants Alleen S. Mildren and Donald L. Mildren, being first duly sworn, testified as follows:

The Clerk: Your full name, please.

The Witness: Melbourne S. Hamilton.

### Direct Examination

By Mr. Peterson:

Q. Mr. Hamilton, you are a deputy county clerk of the County of San Bernardino, are you?

A. I am.

(Testimony of Melbourne S. Hamilton.)

Q. And as such, you have access to all the records and files of the Superior Court there?

A. I do.

Q. Have you brought with you, pursuant to subpoena, the original file in action No. D 68261 of the Superior Court of San Bernardino County?

A. I have.

Q. Is that the action involving Alleen S. Mildren, as plaintiff, and cross-defendant, versus Paul Mildren, defendant and cross-complainant?

A. That is correct.

Mr. Peterson: May I approach the witness, your Honor?

The Court: Yes.

Q. (By Mr. Peterson): I call your attention, sir, to [26] a document filed September 28, 1950, entitled "Cross-Complaint," by Paul Mildren. This is part of the file in the divorce action referred to?

A. Yes, file No. 68261, Official Records, San Bernardino County Superior Court.

Q. I call your attention to the allegations contained in Paragraph V c, "That the parties hereto own and possess the following community property:

"c—Life insurance policies" that is contained in the file, as well, is it not? A. That is correct.

Mr. McWilliams: Your Honor, to that question I would like to make an objection on the ground that it is not material, it is not an issue in this case, and I don't believe that there is any issue of fact agreed upon in the pretrial order as to what plead-



(Testimony of Melbourne S. Hamilton.)

ing or what preceded the orders set forth in the pretrial order.

The Court: Well, counsel, I understood that it was your position that these policies were granted to the decedent——

Mr. McWilliams: That is correct.

The Court: By the court, in this divorce action?

Mr. McWilliams: That is correct, your Honor.

The Court: Isn't this the divorce action that he is referring to here, these documents?

Mr. McWilliams: Yes, your Honor, that was the divorce [27] action, but there is the final decree there, and all the proceedings prior to and leading up to that decree would be merged in the decree. And the only thing that would be material would be the decree itself and not the pleadings or the evidence that led up to that decree.

The Court: But as I understand your position, you disagree as to the interpretation of that decree as to what was granted in the decree, do you not?

Mr. McWilliams: No, your Honor, I don't think there is any disagreement about the wording of the decree.

The Court: But, isn't it a fact that you contend these insurance policies passed under the decree and he contends they did not pass under the decree?

Mr. McWilliams: That is right.

Mr. Peterson: That is correct, your Honor.

Mr. McWilliams: That is right.

The Court: And I am supposed to decide that?

Mr. McWilliams: Yes.

(Testimony of Melbourne S. Hamilton.)

The Court: So you say it is immaterial and that I shouldn't know anything about what happened in this lawsuit?

Mr. McWilliams: Yes, your Honor, I think——

The Court: Is that your position?

Mr. McWilliams: I think that your decision has to be on the basis of the decree itself, rather than the pleadings that led up to the decree. [28]

The Court: I have to know what happened in that lawsuit. In other words, if it is your contention and you say that the decree means one thing and he says that it means another, and you say it included and passed those policies and he says it didn't pass the policies, obviously, before I even see it, it must be ambiguous; it must be or you would not be disagreeing. So, of course, it is going to be necessary for me to know what occurred in that lawsuit.

Mr. Rogers: If the court please, I think that Mr. McWilliams' position was that if this file is to be put into evidence piecemeal, through the testimony of a witness, that we are getting the cart before the horse. It seems to me that for the purpose of saving time, if that judgment and that entire record goes into evidence, all right, but the testimony of this witness should not take it apart piece by piece.

The Court: Well, counsel, that is not the position that Mr. McWilliams took, because, as a matter of fact, that is why I asked those questions. It is amazing to me. Frankly, I would have thought that he

(Testimony of Melbourne S. Hamilton.)

would be wanting to get the whole file into the record, instead of keeping it out. That is why I thought I must have misunderstood you here. It would seem to me that he would want that in the record, the whole file, because, of course, he necessarily must be looking to this court to declare that those policies [29] were a subject of that action and passed under that decree, if I understand his position properly, so it would seem to me he would want that in the record.

Mr. McWilliams: I have no objection to the file being in the record, but it is my position that the decrees in that action are not ambiguous, they are perfectly plain on their face, and that it is not necessary, and it is only wasting time to go into what led up to them. And in making my objection I was trying to get a ruling on that point.

The Court: Well, do you wish to offer this record into evidence?

Mr. Peterson: Yes, your Honor. My only purpose in asking him these questions is to try to confine it down to the matters which are directly in issue, but I have no objection to the entire file going in if the court feels it would be helpful.

The Court: All right, put the whole file in evidence, and the particular portions of it that you think are appropriate to your position, you simply refer to them in your argument.

Mr. Peterson: Very well, your Honor. The file is offered in evidence as the cross-defendants Mildrens' Exhibit next in order.

(Testimony of Melbourne S. Hamilton.)

(Said file was designated as Cross-Defendant Alleen S. Mildren Exhibit B.)

The Witness: If your Honor please, these are official records of San Bernardino County and the only records, and [30] perhaps counsel might stipulate that certified copies may be substituted therefor, so that we might return those files. Those are the only files we have.

Mr. Peterson: I would have no objection to that. I think it could be photostated by the clerk.

Mr. Rogers: I have no objection to it being withdrawn bodily and returned to the clerk, with the permission of the court, after the final determination of this action, to save the expense of replacing it.

Mr. McWilliams: Your Honor, I have already certified copies of all the papers respecting this file which I feel material and I will be glad to introduce those and agree that the file may be returned.

The Court: Well, there is one thing that could be done: At 11:00 o'clock, when the court takes a recess, you can take a look at the file, and if you ascertain they are certified copies of all the documents needed, then, of course, you may stipulate that photostatic copies may be used and the file can be returned to the clerk. That will take care of it.

Mr. Peterson: There are some that aren't certified.

The Court: If you feel there are some that he doesn't have copies of, which you feel you should

(Testimony of Melbourne S. Hamilton.)

have, then you may substitute copies for those, have copies made, but first of all you should find out and determine that at 11:00 o'clock.

Mr. Peterson: I have no further questions. [31]

Mr. McWilliams: No questions.

Mr. Rogers: No questions.

The Court: Can you wait for a few minutes?

The Witness: Oh, yes.

### DONALD LEE MILDREN

called as a witness herein on behalf of the cross-defendants, Alleen S. Mildren and Donald Lee Mildren, being first duly sworn, testified as follows:

The Clerk: Your full name, please?

The Witness: Donald Lee Mildren.

### Direct Examination

By Mr. Peterson:

Q. You are Donald Lee Mildren and you are the son of both Alleen S. Mildren and Paul Mildren, are you not?      A. Yes.

Q. And were you living in the home of your mother at 346 North Mango Street, during the months of January and February of 1948?

A. Yes.

Q. At that time where was your father living?

A. In Los Angeles with his mother.

Q. Now, do you recall being present when the agreement which has been introduced into evidence was discussed between your father and mother? [32]



(Testimony of Donald Lee Mildren.)

A. Yes.

Q. You may answer that yes or no.

A. Yes.

Q. Now, do you know when the document itself was executed?

A. Yes, in the latter part of January.

Q. Of 1948?           A. Right.

Q. Now, then, at that time or approximately at that time, did you see the insurance policies which are involved in this action?           A. Yes.

Q. Will you tell the court under what circumstances you saw them, who brought them where and what became of them, that you saw yourself?

A. It was some time in February. My father brought them out in a shopping bag. He usually came out Friday or Friday evening or early Saturday morning. He brought them out and there were some other things in there, and a box of candy. That is all I can remember about it.

Q. And did he say anything about them, when he brought them?           A. Yes, he did.

Mr. McWilliams: I object to any conversation because it is hearsay as to my client. [33]

Mr. Rogers: The same objection.

The Court: You may answer that question yes or no. Did he say anything when he brought them?

The Witness: Yes.

Q. (By Mr. Peterson): Who else was present at that time?           A. My mother.

Q. And yourself and father?           A. Yes.

Q. What was said?

(Testimony of Donald Lee Mildren.)

Mr. McWilliams: And to which I object on the ground that it is hearsay insofar as my client is concerned.

The Court: The objection is sustained.

Q. (By Mr. Peterson): Now, what became of the policies, if you know?

A. My mother and father took them up to Mrs. Maycock's house.

Q. When was that with reference to the time that the policies were brought by your father to your mother? A. It was on a Monday morning.

Q. And did you see the policies again after that time? A. Yes.

Q. And where did you see them?

A. My mother has had them.

Q. How long was it after the time that they had been [34] taken over to Mrs. Maycock's house?

A. I can't really be sure as to the exact date, sir.

Q. Well, approximately when?

A. Within six months to a year, and then I have seen them after that, of course.

Q. In whose possession had they been during all times that you have seen them?

A. My mother's.

Mr. Peterson: You may cross-examine.

Mr. McWilliams: No questions.

Mr. Peterson: Do you have any questions, Mr. Rogers?

Mr. Rogers: Yes.

(Testimony of Donald Lee Mildren.)

Cross-Examination

By Mr. Rogers:

Q. You went along with your mother and father when these policies were taken to the neighbor's house, did you?      A. No, I didn't.

Q. You don't know, of your own knowledge, that they were taken over there, do you?

A. Well, all I can say is I saw them get in the car with them, and that is where they told me they were going with them. I couldn't—

Mr. Rogers: No other questions.

Mr. McWilliams: No questions.

Mr. Peterson: You may stand down.

(Witness excused.) [35]

Mr. Peterson: Mrs. Maycock.

EDITH V. MAYCOCK

called as a witness herein on behalf of the cross-defendants, Alleen S. Mildren and Donald Lee Mildren, being first duly sworn, testified as follows:

The Clerk: What is your name, please?

The Witness: Edith V. Maycock.

Direct Examination

By Mr. Peterson:

Q. Where do you live, Mrs. Maycock?

A. I live at 1783 Laurel Drive, in Fontana.

Q. Is that the same address where you have

(Testimony of Edith V. Maycock.)

lived for many years past?           A. Yes.

Q. Are you acquainted with Alleen S. Mildren, one of the parties to this action?           A. I am.

Q. And in his life were you acquainted with Paul Mildren, Sr.?           A. Yes.

Q. I call your attention to a time in the early part of February, 1948, and ask you to state whether or not at that time Mrs. Mildren came to your home and brought you some documents?

A. They did, both the doctor and Mrs. [36] Mildren.

Q. Now, at the time that they arrived at your home, do you remember the time of the day it was?

A. Well, it seems to me it was early in the morning, but I could not say positively about that.

Q. I want you to tell in detail what was said by both Mrs. Mildren and by Dr. Mildren at that time?

A. Well, I was in my front bedroom and it looks right out on the street, and I saw Dr. Mildren and Mrs. Mildren driving up, and she was in a hurry and I just motioned for her to come in, that is what it seemed to tell her, and she just got out the car and came and said, "Here, I have some"——

Mr. McWilliams: To which I object.

The Court: Sustained. Don't give us conversation, don't tell us what was said. Just tell us what happened.

Mr. Peterson: Yes.

The Witness: Mrs. Mildren brought some papers in, in a shopping bag, and she said, "Will you take care of these for me?"

(Testimony of Edith V. Maycock.)

Mr. Peterson: No. You are getting into conversation again.

The Witness: I am sorry.

Mr. Peterson: Which we are not allowed to have. It would be hearsay, Mrs. Maycock.

Q. (By Mr. Peterson): What were the documents which she brought to you? [37]

A. Well, she said they were——

Mr. McWilliams: To which I object.

Mr. Peterson: No.

Q. (By Mr. Peterson): Did you look at them and see what they were?

A. I took the bag and put it in a box and I didn't look at it, at that time.

Q. Did you later look in it, before you gave it back to Mrs. Mildren?

A. She came back and she showed them to me, when she came back to get them.

Q. And what documents were they?

A. They were annuities and insurance policies, and fire insurance policies I think.

Q. I show you these five policies which have been marked as Cross-complainant Jessie Mildren's Exhibit No. 1 and ask you to look at them.

(The witness examines said documents.)

Q. (By Mr. Peterson): I will ask you whether or not those appear to you to be the same policies that you received at that time? A. They do.

Q. Then, what became of the policies, that is,



(Testimony of Edith V. Maycock.)

how long did they remain in your possession and to whom did you deliver them? [38]

A. They must have been—they were there a few days, I don't remember, three or four days; Mrs. Mildren came and got them.

Q. Was Dr. Mildren with her on that occasion?

A. No.

Q. Did you ever see the policies again, then, after that time? A. No.

Q. That is, until now?

A. Until now, just now.

Mr. Peterson: You may cross-examine.

### Cross-Examination

By Mr. McWilliams:

Q. Mrs. Maycock, you say that these are the same policies as were in the shopping bag in 1948?

A. They appear to be, to me.

Q. Well, isn't it as a matter of fact, you just saw policies at that time and you see policies now? Is there anything about these policies that makes you sure that they are the same policies you saw then?

A. By inspecting them today I think they are the same. I remember them being white policies, and I think they are the same, I feel sure, because——

Q. In other words, you feel they are the same because they are white policies? [39]

A. No, because she showed them to me and I read what they were.

(Testimony of Edith V. Maycock.)

Q. How many policies were in the shopping bag?

A. Well, there were more than that five, there were more.

Q. You don't remember how many there were?

A. No, I didn't count them.

Q. You don't remember the numbers of the policies, do you?           A. No, sir.

Mr. McWilliams: That is all.

Mr. Peterson: That is all.

(Witness excused.)

Mr. Peterson: I have one more witness, your Honor, whom I would like, if I could, to examine out of order, that is in regard to one of the issues, that appears in the pretrial order, as to whether or not the service of an order was effected. This particular gentleman is employed at nights and sleeps in the daytime and if counsel is not inconvenienced by it I would like to put him on. His testimony will be very brief.

Mr. McWilliams: I have no objection.

Mr. Peterson: Mr. Bell. [40]

WILLIAM AUGUSTUS BELL

called as a witness by and on behalf of the cross-defendants Alleen S. Mildren and Donald Lee Mildren, being first duly sworn, testified as follows:

The Clerk: Your full name, please?

The Witness: William Augustus Bell.

Direct Examination

By Mr. Peterson:

Q. Mr. Bell, what is your business or occupation?

A. I am a private investigator and also run the Merchant's Patrol.

Q. Are you employed by anyone?

A. Krekel Investigation Bureau.

Q. Where is that located?

A. In San Bernardino.

Q. Are you acquainted with Mrs. Alleen Mildren, one of the parties to this action?

A. Yes.

Q. Do you know where she lives on Mango Street in Fontana?           A. Yes, sir.

Q. Calling your attention to the early part of 1954, did you have any particular duties with respect to her home?           A. Yes, sir.

Q. And what were your duties at that [41] time?

A. We were checking it. She was out of town at the time.

(Testimony of William Augustus Bell.)

Q. You were checking what, sir?

A. The premises or house. We were on the patrol and we just go out and we check the windows and the doors and see if anyone was trespassing or any malicious mischief or anything going on, on the property.

Q. Now, on the occasion of your visits to this property in the early part of the year 1954, did you find any document stuck up anywhere on the house?

Mr. McWilliams: Your Honor, I would like the record to show that this testimony I believe is immaterial. I am not objecting to the statement of the court that anything that is in the pretrial order is admissible and material as far as testimony is concerned, but I don't want it to be understood that I am waiving objection to the materiality.

The Court: Now, counsel, if you have an objection, you make it. Now, you say because of my statements that it is in the pretrial order, that makes it material. I don't know. I do say that anything you say is material, and the last thing you referred to, you stated that it was material. I don't know whether this is or not, and I don't even know whether you have stated in your pretrial order that it was material. Frankly, the evidence hasn't gone far enough for me to know just what the purpose of it is. I don't know. I am looking [42] at the pretrial order here and I see where you state that it is an issue of fact as to whether a certain return was made in the Sheriff's Office. I don't know if that is what you are referring to. However, I don't

(Testimony of William Augustus Bell.)

think this is the same man, because the name he has given here today is not the name of the sheriff who made that return.

Mr. McWilliams: No. That is another matter.

The Court: Oh, that hasn't anything to do with this?

Mr. McWilliams: No, it has not.

The Court: If you think it is immaterial——

Mr. McWilliams: I will make my objection at the proper time.

The Court: All right.

Q. (By Mr. Peterson): Did you find some legal document stuck up on the outside of the house?

A. Yes, sir.

Q. Where did you see it?

A. It was stuck under the window to the left of the front door.

Q. And how often did you see that document there? A. I saw it the day I removed it.

Q. You say you removed it. Did you remove it to see what it was? A. Yes, sir.

Q. What was it? [43]

A. It was——

Mr. McWilliams: To which I object on the ground it is immaterial and not within the issues in this case.

The Court: Objection sustained.

Mr. Peterson: I wonder if I may be heard, your Honor?

The Court: Yes, you may.



(Testimony of William Augustus Bell.)

Mr. Peterson: And state the purpose of it. You will note in the pretrial order a copy of that return that the sheriff made and following that, the question is, was the service effected? That is also contained in the pretrial order and we propose to show the court what was in fact done with regard to the service of it.

The Court: It is too remote, counsel.

Assuming that it was material here, that would not prove that it was or wasn't. In other words, this man didn't have anything to do with the service. It could be that it was served, a document might have been served on someone and subsequently stuck under the door. That doesn't prove anything.

Mr. Peterson: What my offer of proof would do, your Honor, is to show that this document was taken off by this witness and returned to Mr. McWilliams and it related to the same document.

The Court: Is this witness a deputy sheriff of San Bernardino County? [44]

Mr. Peterson: No. He was guarding the property at the time Mrs. Mildren was there, and found the document there. It had been there several days.

The Court: Well, the objection is sustained.

Mr. Peterson: I have no further questions.

Mr. McWilliams: No questions.

The Court: May Mr. Bell be excused?

Mr. Peterson: I have no further evidence.

The Court: Well, we will take the morning recess and you can take those documents up with Mr.

Peterson there and see if you can agree so that the clerk can take his file.

Mr. McWilliams: Your Honor, Mr. Peterson has already examined these documents this morning and I would like to introduce them into evidence, that is all I have, just to introduce these documents and I will be through.

Mr. Peterson: I have no objection to those documents going into evidence. My only objection is that I think there are other documents which I think the court should have in order to understand the case. I have seen documents that he has and I have no objection to those going in.

The Court: All right. Then, will you point out what other documents are in there and then you may have photostatic copies made of them.

Mr. Peterson: Yes.

The Court: If you wish, so that the court clerk can get [45] his file. Now, will you check that with him?

Mr. Peterson: Yes, sir.

The Court: So that you can determine if there are documents in the file that he does not have. Then, let me know when I take the bench again, and arrange for you to take the file and have photostats made and substitute the photostats for the originals, so that the file may be returned to the clerk. Now, of course, after you have discussed it together and looked at those files, then you will be in a better position to know what is necessary.

We will take a 10-minute recess.

(Recess.)

Mr. Peterson: If the court please, we have examined the file. Of course, the entire file is in evidence and the only parts of it I think that the court may need to consider would be the pleadings of the action, and if it meets with the court's approval, I suggest that the file be returned to Mr. Hamilton, who has told me that he will take them and photostat them, which he will certify himself today and have them in the court's possession. They are the complaint, answer, cross-complaint and the answer to cross-complaint, in addition to the documents which Mr. McWilliams has which are certified copies, and I have no objection to those going in.

Mr. McWilliams: Your Honor, I would like to introduce the informal Opinion of the Court, which was filed February 11, [46] 1953. I mean I would like to introduce a certified copy of it. I don't have a certified copy here.

The Court: First of all, what are the documents that you have here? Now, these are the documents that you have examined and they are certified copies——

Mr. McWilliams: Yes, your Honor.

The Court: ——of portions of the record of that case in the Superior Court in San Bernardino County.

Mr. McWilliams: That is correct, your Honor.

The Court: All right. Now, do you want to offer those?

Mr. McWilliams: Yes. However, they are all documents that are contained in the Superior Court

file and as I understand it, the Superior Court file is already in evidence, so we are simply offering these photostatic copies to substitute for the file itself, for the originals.

The Court: Well, that is right. The only thing is that you will have to put them in under numbers, because they are not complete copies of the record. In other words, you have the Superior Court file in, and as I understand your prior stipulations, you will not have the complete Superior Court file in after those photostats are made, that you have agreed that the file may be removed, on condition that certified copies of portions of the file are put into the record, and so that we might identify them without any mistake, we [47] can have them marked. I am trying to take one step at a time.

As I understand, you have in your hands now certified copies of portions of the file, and that there is another document which you do not have, of which you are going to obtain a copy, and there are some documents which you do not have copies of that Mr. Peterson wants in and that he is going to get. So let us take one at a time. Let us put in what you do have.

Mr. McWilliams: I have a certified copy of interlocutory judgment of divorce in this action No. 68261, which was filed April 8, 1953. Do you want to give one number to all of them at this time, your Honor, or number them separately?

The Court: Well, you can put them all in under one number.

Mr. McWilliams: There is a certified copy of the

final judgment of divorce in this same action, which was filed April 12, 1954.

There is a certified copy of order to show cause and affidavit in re contempt, in this same action, which was filed January 18, 1954.

There is an informal opinion in this same action, a certified copy of an informal opinion in the same action which is dated March 19, 1954.

There is a certified copy of findings of fact and conclusions of law in this same action, which were filed May 7, [48] 1954, and are dated May 7, 1954.

And a certified copy of an order made on trial of orders to show cause, which was filed May 7, 1954.

There is a certified copy of a return of service by the Sheriff of San Bernardino County, which was filed May 11, 1955. I am sorry.

Mr. Peterson: It is endorsed May 11, 1955, and dated June 21, 1954.

Mr. McWilliams: Yes, it is dated June 21, 1954, and filed May 11, 1955.

There is a certified copy of affidavit of service of order made on trial of orders to show cause, which was filed April 20, 1955.

Mr. Peterson: As to that one, your Honor, I have this objection, that it is irrelevant in that service was made at a time after the death of Paul Mildren, Sr., at a time when Mr. McWilliams did not represent the personal representative of his estate, and that, at that time Mr. McWilliams was acting for a client who is no longer here.



Mr. McWilliams: Mr. Peterson, I think, is arguing a question of law, because he has already introduced this document into evidence and I am simply substituting a copy.

Mr. Peterson: It is a part of the file, but we make objection to its consideration by the court on the ground it is irrelevant. [49]

The Court: He may put it in as a copy of the document which is already in evidence, or a portion of it. Now, as to the effect of it, of course, there are many papers in that file on which you perhaps differ. As to their effect in this particular proceeding, that you may argue.

Mr. McWilliams: Your Honor, that completes the list of certified documents from this file. I have some other documents to introduce. I think we ought to assign one number for the documents I have just listed.

The Court: Well, give those that you have there to the clerk and they will be given a number.

The Clerk: Cross-complainant Jessie Mildren's Exhibit No. 2.

(The documents referred marked as Cross-Complainant's Exhibit No. 2 were received in evidence.)

Mr. McWilliams: Now, I have some other documents.

The Court: Well, give him all those documents you have, now. They are all copies of certain documents that are in the file.

Now, in addition to that, I understand as to one

other document in the file you don't have a copy of and you wish to have a certified copy made.

Mr. McWilliams: Yes, your Honor. That is an informal opinion which was filed February 11, 1953. I say, "informal." It is a signed memorandum opinion. It is not the final decree [50] but it is an opinion by the judge pro tem who tried that case.

Mr. Rogers: The document is dated February 10, 1953, and filed February 11, 1953.

Mr. McWilliams: I will file a certified copy of that document.

The Court: Very well. That certified copy of the document will be received and marked as part of this exhibit you have just put in.

Mr. McWilliams: All right, your Honor.

Now, there is an exhibit, which is referred to in this opinion, that is missing from the file of exhibits, and I want that exhibit in evidence, but if it can't be found I, at least, want a record made of the fact that I offered it in evidence, and that is Exhibit "E" which is referred to in the first paragraph of the opinion.

Mr. Rogers: If the court please, it would be my thought that the deputy clerk be recalled to the stand with reference to that exhibit. The exhibits are here and we have not been able to find the particular exhibit that is referred to in the opinion, and I think this clerk may be able to lay some foundation for its absence.

The Court: Well, you can call him, if you wish. I can't sit here and guess, you know, as to these documents. Of course, what should have been done, if

you had been prepared with this case, you would have come in here with certified [51] copies of the papers that you want, instead of handling it in this slipshod manner, each of you would have had the certified copies of the papers that you wanted to put into evidence.

Now, you are referring to a paper that is not included in the file, is that it?

Mr. McWilliams: That is right, your Honor.

The Court: You may proceed to try and prove it, if you can, whatever you want to do. Go ahead.

Mr. McWilliams: I have three other documents here which I would like to introduce at this time. One of them is a photostatic copy of the original request for change of beneficiary which is referred to in this file and in the pretrial order. I have had the original in court and counsel has had a chance to inspect it, and we agreed that I could introduce a photostatic copy instead of the original.

Mr. Peterson: I am not objecting to the foundation on it.

The Court: What is that?

Mr. Peterson: I am not objecting to the foundation.

The Court: All right. It will be received.

The Clerk: Cross-Complainant Jessie Mildren's Exhibit No. 3.

(Said request for beneficiary was marked as Cross-Complainant's Exhibit No. 3 and received into evidence.) [52]

Mr. McWilliams: Another is an original letter

written by Mr. Taylor F. Peterson, dated April 19, 1954, as referred to in the pretrial order.

Mr. Peterson: I am going to object to that on the ground it is set forth at length in the pretrial order and stipulated to, and there is no need of encumbering the record with it.

Mr. McWilliams: All right.

The Court: Is that correct?

Mr. McWilliams: That is correct, your Honor. I will withdraw that.

Another document, which I will admit is immaterial, but I think it should be called to the court's attention on the question of fact, that there is a statement of fact in the pretrial order that the order made on trial of orders to show cause has never been served on Alleen Mildren. I have an affidavit of service here showing that it was served May 10, 1955.

Mr. Peterson: I am going to object to that as immaterial. She is here in any event. She was also served with the subpoena, on the same day, by Mr. McWilliams, to bring the policies into court, which she did.

I see no point which would assist the court in any way, to learn that she had also been served with this Superior Court order on May 10, 1955. I object to it as immaterial, incompetent and irrelevant. [53]

The Court: Objection sustained. As I understand, you are now talking about a service of that order to show cause in that proceeding in San Bernardino back in 1954?

Mr. McWilliams: That is correct, your Honor.

The Court: You stipulated that it hadn't been. In other words, at the time of the filing of this action, it had not been served upon her at all. You have a stipulation to that effect in the pretrial order.

Mr. McWilliams: That is correct, at that time, yes.

The Court: That is the order you are now referring to, isn't it?

Mr. McWilliams: That is correct, at that time. Now, it has been served since.

The Court: What will it prove, that it has been served now?

Mr. McWilliams: I first want to make it clear that this statement number 9 is not now true, even though it was true at the time it was made. I don't think it is material.

The Court: For the purposes of this action, it is true, no service was ever made upon the said Alleen S. Mildren at the time of the commencement of this action?

Mr. McWilliams: That is correct, your Honor. That is correct.

I would like at this time to call the clerk back to the stand. [54]



## MELBOURNE S. HAMILTON

recalled as a witness herein by the cross-complainant Jessie Mildren, having been previously duly sworn, testified further as follows:

## Direct Examination

By Mr. McWilliams:

Q. I am showing you the San Bernardino Superior Court file in case No. 68,261, which you have just identified on the stand.

I will refer you to the opinion which was filed February 11, 1953. I will read the first part of it:

“That plaintiff is entitled to a divorce on the ground of extreme mental cruelty.

“That the parties hereto acquired the following Community Property:

“1. Life Insurance Policies (See Defendant’s Exhibit ‘E’).”

Now, will you identify a pen and ink and pencil written document on yellow-lined paper that I am showing you, now?

A. Yes. This yellow tablet paper is a sheet that is used as an exhibit form of receiving exhibits in evidence or for identification in trials of the Superior Court in San Bernardino County.

Q. I will direct your attention to one entry here which is under “Defendant’s Exhibit No. E,” “Letter dated [55] 11-25-52.” Do you have that exhibit with you today?

A. It does not appear to be here.

Q. You have just gone through an envelope full

(Testimony of Melbourne S. Hamilton.)

of exhibits. Are those the only exhibits in this case, that you know of?

A. No. At one time there was an action in the Superior Court in San Bernardino, Actions 75819 and 75818, entitled Alleen S. Mildren versus Paul Mildren and Jessie Mildren. It was consolidated with Action 68261.

Not having been the clerk in either of those actions at that time, it is difficult to say whether this exhibit here as listed, was introduced specifically for the other actions or for this action. I checked the Minute Orders of No. 68261 before coming to Los Angeles this morning on subpoena, and I fail to see any Minute Order returning these exhibits, et cetera, in Action 68261; in other words, I verified what appeared to have been introduced at that time and that appears were in the file upon leaving the Clerk's Office, and I might just take an item, take an item on a check-off list where I checked, to check these off to verify the case numbers. Often they are returned to the parties after conclusion of the actions. Normally, when that is done, there is a withdrawal exhibit slip in the file replacing the exhibit withdrawn.

Q. Then, as I understand it, you think it is possible [56] that you have in your possession in San Bernardino this Exhibit E to which we have referred?

A. Well, it should be in the file here. It is listed on the exhibit list and there is no notation that it has been withdrawn or returned.

(Testimony of Melbourne S. Hamilton.)

Q. Well then, is it your opinion that this exhibit has been lost and cannot be produced?

Mr. Peterson: Just a moment. I object to that on the ground it calls for the opinion and conclusion of the witness.

The Court: Overruled. He is trying to find out.

A. We may misplace an exhibit, but we rarely ever lose one.

Q. (By Mr. McWilliams): Then, do you believe you may be able to find this exhibit?

A. I believe so.

Mr. McWilliams: Your Honor, I wonder if I could have permission to introduce this exhibit, if and when it can be found?

The Court: I will continue the case, counsel. As to these papers that are to come in, I am not going to leave this case open so that you may or may not introduce something, if you happen to find it. If you want me to, I will continue the case until tomorrow so it can be brought in tomorrow, but I am not going to finish the case, close the case, and then after the case has been submitted have you bring in and submit [57] documents when all counsel are not present.

Mr. McWilliams: Well, I would like to have a continuance for the purpose of introducing this Exhibit E, or if we could handle it by stipulation, I am sure counsel would agree to stipulate that it could be introduced at a later date, if it can be found.

Mr. Peterson: I have no idea of what that par-

(Testimony of Melbourne S. Hamilton.)

ticular document is. I don't have any independent recollection of it. I would want to see what it was before I would stipulate to it.

Mr. McWilliams: Well, it is mentioned in this opinion of the court, which states,

“That the parties hereto acquired the following Community Property:

“1. Life Insurance Policies (See Defendant's Exhibit 'E').”

Now, obviously that is a description of it.

The Court: Mr. McWilliams, do you mean to tell me that that is the first time you ever saw or heard of that document?

Mr. McWilliams: I knew there was an opinion in the file, but I was not cognizant at that time and I did not notice that there was a reference to the description of the policies until this morning, that is right, your Honor.

The Court: Well, as I indicated to you, I will cooperate as much as I can with you and I am willing to continue this [58] case until tomorrow so you will have an opportunity tonight or this afternoon to try and find the paper, but I can't, of course, leave a case dangling in the air so that any document that you might have you can submit and make a part of this record. Obviously, you can't put anything in the record, unless all counsel are present. And you don't even know what it is yourself.

Mr. McWilliams: That is correct, your Honor.

I have no further questions at this time.

Mr. Rogers: Before the court makes an order of

(Testimony of Melbourne S. Hamilton.)

continuance, I was wondering if there would be some indication as to how much more evidence counsel has?

The Court: Oh, I don't mean to continue it now. I meant to go ahead and finish your case today. But I take it from what you said a few moments ago, you about have your case in, haven't you?

Mr. McWilliams: I have it in, your Honor.

The Court: So, of course, I am assuming that when all the evidence is in, whether it is now or whether it is this afternoon, then, instead of taking the case under submission I will continue it until tomorrow to give Mr. McWilliams an opportunity to find this evidence that he has in mind.

You might be able to clear up all the rest of it. In other words, there isn't any reason why this afternoon you couldn't get your certified copies of those other documents [59] and put them all in tomorrow morning, so you won't have anything hanging over then.

Mr. McWilliams: I will be glad to do that, your Honor.

Mr. Rogers: That opinion is a rather lengthy document. I don't know whether the clerk could get photostats out in one afternoon or not.

Mr. Peterson: Mr. Hamilton tells me he can go somewhere in town, to a commercial concern and have them photostated. I told him I would give him the money to pay for them and he told me he could get them for me this afternoon. So I think all the



(Testimony of Melbourne S. Hamilton.)

documents I am interested in at least can be photostated by a commercial concern.

The Court: Can you do that this afternoon?

Mr. Hamilton: I believe so, your Honor.

The Court: That would include any document that you want?

Mr. McWilliams: Yes, your Honor.

The Court: All right, Mr. Hamilton can be excused at this time and will return tomorrow.

Mr. Hamilton: Yes.

The Court: And you will return with those documents, and, incidentally, bring the file with you so if there is any question they can compare the documents from the file. Then you will be permitted to take the file back with you tomorrow. [60]

Mr. Hamilton: Very well, your Honor.

The Court: Then you can also see whether you can find this document which Mr. McWilliams is looking for, now, so that in that way you will have everything in the record tomorrow and we won't have anything dangling.

Mr. Rogers: The clerk might even inspect the policies and this item here referred to in connection with the policies and if they have been marked "Withdrawn," then the marking would likely appear on the envelope.

The Court: During the recess you can check on anything in connection with the documents here or anything in evidence. Of course, it may take a little more pouring over that file. All right.

There are no more questions of this witness?

Mr. Peterson: No.

Mr. McWilliams: No.

The Court: You may step down.

Mr. McWilliams: I have finished my case.

The Court: Do you rest?

Mr. McWilliams: Yes.

The Court: Do you have anything, Mr. Rogers?

Mr. Rogers: No, your Honor, nothing.

The Court: All right. You rest, of course, with the understanding that you may reopen for the purpose of offering that document if it is [61] found.

Mr. McWilliams: That is correct, your Honor.

The Court: Do you have anything further, Mr. Peterson?

Mr. Peterson: No, your Honor, not until the conclusion of his case. Of course, there may be some rebuttal that I would require.

The Court: There may be some rebuttal. He has rested.

Mr. McWilliams: Yes.

Mr. Peterson: Except that it can be reopened to offer these documents.

The Court: Oh, yes, for the documents.

Mr. Peterson: And there is one, I don't know what is in it, and naturally I would not want to rest my case altogether until I did know what is in it.

The Court: Obviously you may reopen if there is anything you want to put in after that one document is received.

Are there going to be any arguments?

Mr. McWilliams: Your Honor, I think it would be better to submit it on written arguments.

Mr. Peterson: I would prefer to do so, your Honor.

The Court: All right. It will be continued. Then we will continue it until 9:45 tomorrow morning.

Mr. Peterson: Thank you.

(Whereupon, an adjournment was taken until the following day, Wednesday, June 1, 1955, at 9:45 a.m.) [62]

Wednesday, June 1, 1955; 9:45 A. M.

The Clerk: The Mutual Life Insurance Company of New York vs. Alleen S. Mildren, et al., for further trial.

The Court: You may proceed.

Mr. McWilliams: Has the clerk the photostatic copies?

Mr. Melbourne S. Hamilton: The photostats, sir, will be ready at 11:00 o'clock, if not shortly after noon.

Mr. McWilliams: Well, your Honor, with reference to that exhibit that we tried to find yesterday, I am informed that a complete search has been made by the clerk and by Mr. Peterson, and the only thing that they can tell me is this letter, the letter from the Mutual Life Insurance of New York, does not show to whom it was written or what it was.

Mr. Peterson: Well, the date appears, Mr. McWilliams, on the list of exhibits.

Mr. McWilliams: Yes. It is November 25, 1952, the date of the letter, and I telephoned Mr. Tackabury and he does not have it and has no record of it. So it seems that the letter is not available.

Mr. Peterson: I might state this to the court: I went personally to the Clerk's Office and obtained the services of the Chief Deputy Clerk. We went to Commissioner Haberkern, who was the judge pro tem who tried the case, and examined his notes, and he showed those to us and they [63] indicated that this particular exhibit was a letter from the Mutual Life Insurance Company of New York dated November 25, 1952.

I personally have no recollection of the letter or its contents at this time and nothing in my notes reveals what it is.

The Court: So you just don't have it?

Mr. McWilliams: Just don't have it, your Honor.

The Court: Had you investigated before and had written to the Insurance Company, you might have had a copy of it.

Mr. McWilliams: I might say that the file that was referred to of Mr. Tackabury was supposed to include all the correspondence and documents in connection with it, but it started in 1953, so that indicates the letter was not available and was not back there, because they referred the entire file out here.

The Court: Well, you want to put this over for an hour, is that it? The other papers will not be available for an hour.

Mr. McWilliams: Well, I think the clerk said not for an hour and possibly not until 2:00 o'clock. It might be better to put it over until 2:00.

The Court: I thought he said 11:00 o'clock. It is all right with me.

Mr. McWilliams: Is that right, Mr. Clerk? Are you sure [64] they will be ready?

Mr. Hamilton: He said to come in at 11:00 o'clock and if they weren't ready then it will be shortly after lunch, but he will try to have them by 11:00 o'clock.

Mr. McWilliams: I think it would be better to put it over until 2:00 o'clock.

The Court: He told you to come in at 11:00 o'clock? Is that here in Los Angeles?

Mr. McWilliams: Yes.

Mr. Hamilton: Yes, just here on South Spring Street, your Honor.

The Court: Is that all right?

Mr. Peterson: It is satisfactory. If he can have them shortly after 11:00 o'clock, I would like to conclude this morning, if I can.

The Court: It doesn't make any difference. I am working in chambers. You people can keep coming back, if you want to. Otherwise, we can put it over until 2:00 o'clock. You might come back here at 11:00. I don't care.

Mr. Rogers: As I understand, all the evidence is in; the only thing remaining to be done is to substitute some photostats for certain original documents in this divorce file. It seems to me that is a ministerial act, and the case might well stand sub-



mitted with leave to the clerk to release that file upon receipt of these specified copies. [65]

The Court: That would be true, Mr. Rogers, if we had only one document involved and a certified copy of it was being substituted. We have in the record an entire file and that entire file is not being duplicated.

The attorneys for the parties have agreed. Now, the only thing we want is to have all the attorneys and the parties here when they go in, so that someone is not going to say later, "That was not supposed to go in," or "That is not a true copy of what was supposed to go in."

That is the reason. Of course, if you had all of these copies here now, or if there was just one document that was presently in there and a certified copy of that particular document was coming back, it would be different, but you see, we don't have that, we just have portions of it so that when these documents come back I want all counsel to look at them and I want them to go in and know that there is no objection to them.

Mr. Rogers: I take it, in view of that, then, the court anticipates a withdrawal of this file as an original exhibit.

The Court: Oh, yes, that was the stipulation.

Mr. Rogers: Yes, and then the only evidence of that nature will be these new copies that will be offered when they are available.

The Court: That is right. In accordance with the stipulation, that portion of the file not in evi-

dence will [66] not have duplicates therefor, and will be withdrawn and will no longer be part of the record. That is a part of the stipulation here.

Mr. McWilliams: Your Honor, there is one other matter: That is that the Mutual Life Insurance Company of New York have requested that the original policies be surrendered to them and withdrawn.

Now, will it be necessary for us to stipulate at this time that the original policies can be withdrawn and returned to the Mutual Life Insurance Company of New York, if copies are substituted?

The Court: Yes, you can. Of course, the original copies can go to them at the time the case is disposed of; or you can stipulate, and they can go to them right now, if the parties want to stipulate that they be withdrawn and copies put in, it is all right with me.

Mr. Peterson: It is my understanding, your Honor, that the Mutual Life Insurance Company will take care of the cost of photostating and I have no objection to further stipulating that upon photostatic copies being filed with the court, the original copies may be withdrawn and delivered to the plaintiff.

Mr. McWilliams: I will join in that stipulation.

The Court: Very well. We will recess, then, until 2:00 p.m. [67]

Mr. McWilliams: Well, if you are going to be working in chambers, if we could just wait until they are ready and then bring them in here?

The Court: It is all right with me, if you agree

among yourselves. The only thing is, of course, the three of you would have to do it.

Mr. Peterson: Yes.

Mr. McWilliams: Yes.

Mr. Rogers: Yes.

The Court: Otherwise, one man might sit here and the other go fishing.

Mr. McWilliams: We will arrange that between ourselves and get them in as soon as we can.

Mr. Peterson: We will advise the bailiff as soon as the photostats are here and he can notify you, then.

The Court: All right. I will just continue it until 2:00 p.m. with the understanding that if you are ready at any time before then, let me know that they are available and we will finish it before 2:00 o'clock.

Mr. Peterson: All right, sir.

(Recess.)

(The court reconvened at 11:30 a.m. on June 1, 1955, and further proceedings were had as follows:)

The Clerk: No. 17253-WB Civil, The Mutual Life Insurance Company of New York vs. Alleen S. Mildren, et al., for [68] further trial.

Mr. McWilliams: Ready, your Honor.

Mr. Peterson: And may it please the court, the cross-defendant Alleen S. Mildren offers as her part of the file the following documents:

Complaint for Divorce.

The Court: Just one second. You have one more?

Mr. McWilliams: Yes, your Honor.

The Court: Well, put that one in and then we will take up the others.

Mr. McWilliams: The defendant and cross-complainant Jessie Mildren offers to substitute a photostatic copy of an opinion in the divorce action in San Bernardino County, entitled Alleen S. Mildren versus Paul Mildren, Case No. 68261, the opinion being dated February 10, 1953, and filed in the action February 11, 1953.

Referring to Page 1, Line 23, there is a reference to "Defendant's Exhibit 'E'." I am offering a stipulation at this time that Defendant's Exhibit E is missing from the court file and that it is stipulated that this Exhibit E is a letter from the plaintiff in this action, The Mutual Life Insurance Company of New York.

Mr. Peterson: Yes, dated November 25, 1952, and that otherwise I don't know to whom it was addressed or by whom received. [69]

Mr. McWilliams: So that is the stipulation, then.

Mr. Peterson: Yes.

Mr. McWilliams: That that is the correct date?

Mr. Peterson: Yes, that is correct.

The Court: Very well. It will be received. That document will be received.

The Clerk: Cross-complainant's Exhibit No. 4.

(The document referred to was marked Cross-Complainant's Exhibit No. 4 and received into evidence.)

Mr. Peterson: The defendant Alleen S. Mildren will stipulate that this is a correct copy and need not be certified by the clerk.

Mr. McWilliams: That is correct. We join in that stipulation.

Mr. Peterson: And on behalf of the defendant and cross-defendant Alleen S. Mildren, we offer in evidence the following documents from the same divorce action:

Complaint for Divorce, filed September 20, 1950;  
Answer, filed September 28, 1950;

Cross-Complaint, filed September 28, 1950;  
Answer to Cross-Complaint, filed November 2, 1950;

Findings of Fact and Conclusions of Law, filed April 8, 1953.

Do you likewise join the stipulation that these need [70] not be certified, that they are true and correct copies of the originals?

Mr. McWilliams: That is right.

Mr. Rogers: It is so stipulated.

Mr. McWilliams: It is so stipulated.

The Court: Let them be received and marked as one exhibit.

The Clerk: Cross-defendant's Exhibit C.

(The documents referred to were marked Cross-defendant's Exhibit C and received into evidence.)

Mr. Peterson: And we now stipulate that the original file brought here by the clerk may be re-



turned to the clerk and that these documents stand in their place.

Mr. McWilliams: It is so stipulated.

The Court: Very well.

Mr. Peterson: Do you join in the stipulation, Mr. Rogers?

Mr. Rogers: Yes. I think it was clarified earlier today, but it doesn't seem clear to me, now, as to whether the file itself is completely withdrawn and is to be deemed not in evidence at all, except insofar as these photostats have been offered. They constitute the documentary evidence now, is that correct?

The Court: That is correct, the file is withdrawn and is not a part of this record. And those documents which have just been introduced into evidence are certified copies [71] presented by the parties and are the only portions of the file that are in or are presently in evidence here. Return the file to the clerk.

Do both sides rest?

Mr. Peterson: Yes, your Honor.

Mr. McWilliams: Yes, we rest, your Honor.

Mr. Peterson: It was my understanding that the matter is to be submitted on briefs and we would like to ask the court's pleasure in that regard.

The Court: 15, 15 and 5.

Mr. Peterson: It is satisfactory.

Mr. McWilliams: 10, 10 and 5 would be satisfactory to me.

The Court: How is that, 10, 10 and 5?

Mr. Peterson: I would rather have 15 days, if

it is agreeable to the court. I will try to get mine in sooner if I can, but I do have a rather heavy trial calendar.

The Court: If he is going to file his first, I will make it 10, 10 and 5. If he is going to file his first, you will need more time.

Mr. McWilliams: Your Honor, I will be glad to file mine first, if you want me to, and I will promise you to get it in within time.

The Court: All right, you want to file yours first.

Mr. Peterson: It will be 20 days before I have to file [72] the final one.

The Court: There is an advantage of filing afterwards.

Mr. McWilliams: Then, the order is——

The Court: 10, 10 and 5.

Mr. McWilliams: 10, 10 and 5.

The Court: Yes.

Mr. McWilliams: And I will file mine first.

The Court: Yes.

Mr. McWilliams: Thank you.

The Court: Mr. Rogers?

Mr. Rogers: I will not file one unless it is necessary.

I think it would be proper at this time to mention the possibility of the court reaching a decision which would bring my client's interests into play, and I wonder if it would be proper at this time, if that should be the court's conclusion, that that could be indicated preliminarily for the purpose of any

further proceedings that might be necessary to determine what the order should then be?

The Court: Well, I don't know. I don't know just what you mean. I think perhaps what you mean is the possibility that I may determine that neither one of these plaintiffs are entitled to recover. Is that what you mean?

Mr. Rogers: I mean this: If the court should find that the change of beneficiary to Jessie Mildren was not effected, for some reason, then I take it the situation would [73] be that the old beneficiary designations which were in existence prior to that attempt to change would have been in effect at the time of death, and in that event my client would have a claim under some of the policies, but not all.

The Court: It could be that, or it could be one other thing. It might be well for counsel to keep this in mind in their memoranda. I want you to clearly cover this point. It is possible that I may hold that these policies were passed in the divorce proceeding, that all community property interests of Alleen went to the decedent in this divorce proceeding, and that it had the effect of cancelling her out as the beneficiary.

As a matter of fact, I think the law is clear that where policies pass in a divorce proceeding of that kind, the policies on the life of the husband, where the wife is the beneficiary, where the policies go to the husband, the wife is automatically cancelled out as beneficiary.

However, the husband, and even a divorced husband, may, by his action, show that he wishes to

have that divorced wife remain as the beneficiary. So, we will say, as an illustration, and you will find many cases on this in research, where a husband has been divorced but the policy is assigned to him and he continued to pay the premiums on the policy and he clearly indicated to the former wife that he wanted her to be the beneficiary, although no change was made of any kind, [74] and she continued as the beneficiary and legally under the circumstances such as those, she is the beneficiary.

Now, there is a third situation and I spoke to counsel about this at the pretrial, so that steps might have been taken if counsel saw fit, but nothing was done about it and apparently you are satisfied, that is, the possibility that the court may find that these policies went to the husband at the time of the divorce, were assigned to the husband by the Superior Court, which ended the rights of the wife in the property; in other words, she could not take as a right, and the evidence doesn't indicate that he intended that she take by grace, that he didn't intend that she be the beneficiary, but still she remained as the named beneficiary in the policy.

The evidence may show that he indicated that he wanted to change it to Jessie, but he didn't do the thing that was necessary to effect the change to Jessie. So, if he didn't successfully make the change to Jessie, then, of course, it goes to his estate. In other words, it would then go to his estate. So, if it went to his estate, then none of the parties here would be entitled to it, it would go to his estate, and

I assume that his heirs at law are the two boys. He must have left a will.

Mr. McWilliams: Your Honor, the entire estate is disposed of to Jessie in his will, and there has been a will [75] contest, and Jessie has been appointed executrix and the will has been admitted to probate.

The Court: Well, she is not a party to this action as executrix.

Mr. McWilliams: That is right?

The Court: That is one of the things I indicated before, that she should have been made a party as executrix. I don't know. Apparently you are well satisfied, you are satisfied that if an effort was made to name a beneficiary, in this case Jessie, and it is ineffectual solely by reason of not having the policies, then the courts will give effect to that attempted change, that is your position?

Mr. McWilliams: That is right, your Honor.

The Court: I don't know. You may be able to furnish me with the cases that would satisfy me in that connection with what we have here as proof.

Now, I assume that that letter that you have been hunting around for in the last couple of days might be very important on that.

Mr. McWilliams: No, your Honor. I don't feel on that point that this letter is important. I am satisfied that the attempted change of beneficiary to Jessie was successful, in spite of the fact that the policies were not secured and I will be glad to cite authorities on that.



The Court: Yes, I realize that. Of course, you realize [76] that you have the burden on that.

Mr. McWilliams: I understand that, and I felt sure enough on it so that I did not feel that I was justified in putting my client to the considerable expense of employing another attorney and having him get familiar with this case and appear in the action.

The Court: You have in the pretrial order, have you not, a stipulation that the attempted change was made?

Mr. McWilliams: We have a stipulation that Dr. Mildren executed and furnished to the Insurance Company——

The Court: A request for change of beneficiary?

Mr. McWilliams: ——a request for change of beneficiary, yes.

The Court: That is what I thought. Where is that?

Mr. Peterson: That was offered in evidence yesterday.

The Court: We don't have to look it up now. At any rate, have it in mind when writing your memorandum.

Mr. McWilliams: Yes, your Honor.

The Court: Because that is a very important point, to convince me that the courts will give effect to an ineffectual effort in the case where the policies themselves are not available to him so that he conformed to the requirements of the insurance company by delivering them to it.

Mr. McWilliams: I will cover that very thoroughly.

The Court: All right. The case is submitted. [77]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled [78] cause on the dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 19th day of December, 1955.

/s/ THOMAS B. GOODWILL,  
Official Reporter.

[Endorsed]: Filed January 16, 1956.

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[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 189, inclusive, contain the original:

Complaint;

Cross-Complaint;

- Answer to Complaint;
- Cross-Complaint of Alleen S. Mildren;
- Cross-Complaint of Donald L. Mildren;
- Answer of Defendant Alleen S. Mildren;
- Answer of Defendant Donald L. Mildren;
- Answer of Alleen S. Mildren & Donald L. Mildren to Cross-Complaint of Jessie Mildren;
- Answer to Cross-Complaint of Donald L. Mildren by Jessie Mildren;
- Answer to Cross-Complaint of Alleen S. Mildren by Jessie Mildren;
- Answer to Complaint by Paul Anthony Mildren;
- Answer of Paul A. Mildren to Cross-Complaint of Jessie Mildren;
- Stipulation;
- Order Discharging Plaintiff and for Payment of Attorneys' Fees;
- Cross-Complainant Jessie Mildren's Pre-Trial Memo;
- Cross-Defendant Alleen S. Mildren's & Donald L. Mildren's Pre-Trial Memorandum;
- Cross-Complainant Jessie Mildren's Supplementary Pre-Trial Memo;
- Demand for Production of Documents;
- Pre-Trial Order;
- Brief of Cross-Complainant Jessie Mildren;
- Brief of Defendants and Cross-Defendants Alleen S. Mildren and Donald L. Mildren;
- Reply Brief of Cross-Complainant Jessie Mildren;
- Objections to Proposed Findings of Fact in Favor of Cross-Complainant Jessie Mildren;

Findings of Fact in Favor of Cross-Complainant  
Jessie Mildren (Lodged);

Findings of Fact in Favor of Cross-Complainant  
Jessie Mildren (Filed);

Judgment in Favor of Cross-Complainant Jessie  
Mildren;

Notice of Appeal;

Designation of Record on Appeal; and a full, true  
and correct copy of the Minutes of the Court on  
May 31, 1955; June 1, 1955; and October 27, 1955;  
which, together with the original defendant's Ex-  
hibits A & C and Plaintiff's Exhibits 1, 2, 3 & 4;  
and 1 volume of reporter's transcript for May 31,  
and June 1, 1955, in the above-entitled cause, con-  
stitute the transcript of record on appeal to the  
United States Court of Appeals for the Ninth Cir-  
cuit, in said cause.

I further certify that my fees for preparing the  
foregoing record amount to \$2.00, which sum has  
been paid by appellants.

Witness my hand and the seal of said District  
Court, this 3rd day of February, 1956.

[Seal]      /s/ JOHN A. CHILDRESS,  
                                 Clerk;

By /s/ CHARLES E. JONES,  
                                 Deputy.

[Endorsed]: No. 15029. United States Court of Appeals for the Ninth Circuit. Alleen S. Mildren, and Donald Lee Mildren, Appellants, vs. Jessie Mildren, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed February 6, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



United States Court of Appeals  
for the Ninth Circuit

No. 15029

ALLEEN S. MILDREN and DONALD LEE  
MILDREN,

Appellants,

vs.

JESSIE MILDREN,

Appellee.

STATEMENT OF POINTS TO BE RELIED  
UPON BY APPELLANTS

The appellants, Alleen S. Mildren and Donald Lee Mildren, will rely upon the following points to be urged by them in support of their appeal herein.

1. That the trial court erred in determining as is set forth in paragraph 19 of the Findings of Fact and Conclusions of Law (page 13 thereof), that the interlocutory and final decrees of divorce in the action of Alleen S. Mildren, Plaintiff, vs. Paul Mildren, Defendant, in the Superior Court of the State of California in and for the County of San Bernardino, were valid and effective to constitute the insured (Paul Mildren) the sole owner of five policies of insurance which are the subject of the above-entitled action.

2. That the trial court erred in determining in paragraph 19 of the Findings of Fact and Conclusions of Law; that a purported change of benefi-

ciary as to said policies by the insured, Paul Mildren, was valid and effective to change the beneficiary under each of said policies of insurance, and that the defendant, Jessie Mildren, (Appellee herein) is the sole beneficiary under said five policies of insurance and each of them, and is entitled to receive payment of the entire proceeds thereof.

3. That the trial Court erred in determining that the interlocutory and final decrees of divorce in the divorce action hereinabove mentioned were sufficient in law to transfer any title to the insurance policies hereinabove designated for the reason that in said interlocutory and final decrees of divorce, only "Life Insurance Policies" were assigned to the deceased, Paul Mildren, and that such designation was totally ineffective under the terms of the pleadings, findings of fact and conclusions of law and interlocutory and final decrees of divorce therein, to convey, transfer or assign title to any specific life insurance policies.

4. That the trial Court erred in determining that the agreement of the parties dated January 28, 1948, did not transfer title to the insurance policies hereinabove mentioned from the said Paul Mildren, now deceased, to the appellant, Alleen S. Mildren.

5. That the trial Court erred in determining that notwithstanding the community character of the life insurance policies hereinabove mentioned that the deceased, Paul Mildren, could lawfully trans-

fer more than one-half of the proceeds of said policies.

6. That the trial Court erred in failing to find specifically upon the issue as to whether or not the deceased, Paul Mildren, had lawful authority to transfer more than one-half of the proceeds of such policies.

Dated: February 14, 1956.

TAYLOR F. PETERSON,  
Attorney for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 15, 1956.

